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In the Supreme Court of the United States

OCTOBER TERM, 1988

CITY OF GRETNA, LOUISIANA, et al.,
Petitioner

VERSUS

CITIZENS FOR A BETTER GRETNA, et al.,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

(1) Does *Thornburg v. Gingles* establish threshold criteria for a claim of vote dilution under Section 2 of the Voting Rights Act, including a finding of a pattern of "usual loss"?

(2) Is it permissible for the circuit court to require that a "black preferred candidate" be a member of the black race?

(3) May the circuit court interpret the Voting Rights Act so that candidates of the white race, who out-poll candidates of the black race among black voters, are denied the status of "black preferred" candidacy, merely on the grounds that they are white?

(4) May the circuit court interpret the Voting Rights Act so that candidates of the black race who do not garner appreciable amounts of the black vote are excluded from the "totality of circumstances" test on the grounds that they are not "viable" candidates?

(5) May the circuit court interpret the Voting Rights Act so that candidates of the white race, who do garner majority support among black voters, are excluded from the "totality of circumstances" test, solely on the grounds that they are white?

(6) May the circuit court interpret the Voting Rights Act, so that entire electoral periods are excluded from consideration under the *Velasquez* doctrine in the determination of vote dilution, merely because all candidates were members of the white race?

(7) May the circuit court interpret the Voting Rights Act, so that elections "exogenous" to the challenged mechanism in vote dilution litigation are of probative value, simply because they have candidates of the black race?

(8) May the circuit court interpret the Voting Rights Act so that elections "exogenous" to the challenged mechanism in vote dilution litigation are of no probative value, simply because they have no candidates of the black race?

(9) May the circuit court interpret the Voting Rights Act, so that it protects candidates rather than voters?

DESIGNATED LIST OF ALL PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

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Hubert S. Uzee - Alderman, City of Gretna
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OPINION BELOW

The opinion of the Court of Appeals (Appendix A) is reported at 834 F.2d 496 (5th Cir. 1987). The opinion of the District Court (Appendix B) is reported at 636 F.Supp. 1113 (E.D.La. 1986).

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on December 23, 1987, and the denial of the petition for rehearing was entered on June 13, 1988. The jurisdiction of the Court is invoked under 28 U.S.C. Sec. 1254(1).

STATUTES INVOLVED

The Voting Rights Act of 1965, Sec. 2, as amended June 29, 1982, 42 U.S.C. Sec. 1973[1] is the only statute that

[1] Hereinafter cited as Voting Rights Act.

is the subject of this petition, and it is discussed in detail in *Thornburg v. Gingles*, 106 S.Ct. 2752 (1986) and the related cases.

CONCISE STATEMENT OF THE CASE

This case was tried in the Federal District Court for the Eastern District of Louisiana in January and February, 1985. The district court rendered an Opinion on May 12, 1986, finding that the City of Gretna's system of at-large elections for selecting its five aldermen "violates Section 2 of the Voting Rights Act, and that plaintiffs are therefore entitled to appropriate relief. . . "[2] The trial, held sixteen months prior to the Opinion, was conducted absent the guidance of *Thornburg v. Gingles*. The decision, as well, was crafted and delivered without reference to or knowledge of the Supreme Court's findings in that landmark case.[3] Defendants sought a new trial in light of *Thornburg*. Relief was denied.

The circuit court denied the crucial relevance of *Thornburg* to the City of Gretna's defense, disavowing the threshold standards for vote dilution established in that decision. The circuit court advanced a doctrine of attainder by consanguinity, whereby jurisdictions are placed in jeopardy by political behavior outside of their spheres of responsibility, through a unique and inappropriate notion of vicarious liability. The circuit court established a

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[2] *Citizens for a Better Gretna v. City of Gretna*, 636 F.Supp. 1113 (E.D.La. 1986) at 1115.

[3] The trial court, inexplicably, informed counsel for defendants, when denying a motion for new trial, that it was "fully cognizant of *Thornburg* when it rendered its Opinion". The contents of the Opinion are not consistent with the trial court's assertion. More significantly, this the district court's Opinion preceded *Thornburg* by a matter of seven (7) weeks. See *Record*, Vol 2, p. 447.

doctrine, whereby candidates of the black race were regarded as "preferred candidates, " even if outpolled among black voters by candidates of the white race.

The decision of the circuit court is contrary to the Voting Rights Act, to its governing interpretation in *Thornburg v. Gingles,* and it is in conflict with jurisprudence in other circuits. The district court's original findings should have been remanded for consideration under *Thornburg.* There is no basis, indeed precedent argues to the contrary, for a finding of vote dilution in a given community premised on exogenous voting patterns in statewide or national contests. There is no basis in the Constitution, in legislation, or in jurisprudence for the determination that the color of a candidate's skin can endow him/her with preferential status contrary to the verdict of the electorate.

STATEMENT OF THE CASE

1. The City of Gretna Was Denied Trial Under The *Thornburg* Burden of Proof Scheme.

The fundamental thrust of *Thornburg* is the delineation of threshold conditions for pressing claims of vote dilution under the *Voting Rights Act.* The threshold conditions require a minority group challenging an electoral mechanism (in this instance an at-large system for electing five city aldermen) to establish that the the minority group is large enough and geographically compact enough to constitute a majority in a single-member district; that the group is politically cohesive; that the majority casts its vote as a bloc thwarting the minority's opportunity to elect candidates of its choice; and that bloc voting is structural (pervasive), not just the outcome of an isolated election. *Thornburg* at 2766-2767.

At trial the City of Gretna was scrutinized through the compound eye of the *Zimmer,* or *Zimmer*-derived factors. The relevant ones at trial were:

(1) Past discrimination and its lingering effects;

(2) Effects of discrimination in facilities, education, employment, and housing;

(3) Voting patterns in municipal elections;

(4) The extent of election of black citizens to public office;

(5) Access to the "slating" process;

(6) Existence of large districts;

(7) Majority vote requirements;

(8) The lack of provision for at-large candidates running from particular geographical sub-districts. *Zimmer v. McKeithen* 485 F.2d 1297 (5th Cir. 1973), *East Carroll Parish School Board v. Marshall,* 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976) (per curiam).

These factors played a large role in the legislative history of the *Voting Rights Act.* S.Rep. 30, n. 120, U.S. Code Cong. & Admin. News 1982, 206-208. But, as the Supreme Court stated:

"While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice. Stated succinctly, a bloc voting majority must usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group. The relevance of the existence of racial bloc voting to a vote dilution claim is twofold: to ascertain whether minority

group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidate. Thus, the question whether a given district experiences legally significant racial bloc voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and consequently establishes minority bloc voting within the meaning of Sec. 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting. Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences significant polarization than are the results of a single election." *Thornburg* at 2765-2766.

The threshold features of this passage scaled, or established, a hierarchy among the *Zimmer* factors. In the words of Justice O'Connor:

> "As shaped by the Court today, then, *the basic contours of a vote dilution claim require no reference to most of the "Zimmer factors"* that were developed by the Fifth Circuit to implement *White v. Register's* results test and which were highlighted in the Senate Report. If a minority group is politically and geographically cohesive and large enough to constitute a voting majority in one or more single-member districts, *then unless white voters usually support the minority's preferred candidates in sufficient numbers to*

> enable the minority group to elect as many of those candidates as it could elect in such hypothetical districts, it will routinely follow that a vote dilution claim can be made out, and the multimember district will be invalidated. There is simply no need for plaintiffs to establish 'the history of voting-related discrimination in the State or political subdivision,. . . .' " *Id.* at 2788-2789. (*Cit. om.*, emphasis added.)

The circuit court's response to the City of Gretna's plea for a trial in light of the above was to note that "the trial court determined the Sec. 2 violation from factual findings structured along *Zimmer* guidelines." The circuit court then ignored the City of Gretna's verbatim extracts from *Thornburg* and went on to take issue with a position the City of Gretna never took: "We cannot agree that the Supreme Court in *Gingles* made the *Zimmer* analysis obsolete." *Gretna* at 983.[4]

The City of Gretna has no desire to characterize, on its own, the *Zimmer* factors with words such as "obsolete." Instead, petitioners submit that the relevant framework for evaluating a vote dilution claim are the *Thornburg* threshold criteria. Should that threshold be traversed, then the *Zimmer*-factors might be brought to bear, insofar as they may be relevant.

Irrespective of how one might characterize the *Zimmer*-factors' contemporary legal status, the City of Gretna is entitled to a trial, *and a defense,* under *Thornburg v. Gingles* guidelines. There is nothing novel in this; indeed petitioners' position is supported by precedent in directly

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[4] A computer search through electronically stored text of the City of Gretna's *Original Brief on Appeal* reveals that the word "obsolete" never appears.

related litigation. When the City of Norfolk, Virginia's at-large electoral provisions were challenged in a time-frame overlapping *Thornburg v. Gingles,*[5] the Supreme Court granted certiorari; the judgment was vacated and remanded for further consideration under *Thornburg. Collins v. Norfolk,* 106 *S. Ct.* 3326 (1986). In the Fifth Circuit similar remand was ordered in *League of United Latin American Citizens v. Midland Independent School District,* 812 F.2d 1494 (1987).

2. The City of Gretna Was Held To Novel Legal Standards.

Granted that the City of Gretna was neither tried nor judged under *Thornburg* criteria, to what standards was it held? The circuit court maintains that *Zimmer*-factors were employed. This is wide of the mark.

a. Racial Polarization

In respect to what is commonly noted as the linchpin of vote dilution litigation, racial polarization, *Thornburg's* approach is the following:

> "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it -- in the absence of special circumstances, such as the minority candidate's running unopposed. . .usually to defeat the *minority's preferred candidate.*" *Thornburg* p. 2767. (Emphasis added.)

The important portion of this definition is the notion

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[5] Norfolk's litigation began before Gretna's. It is anomalous, and inequitable, to deny Gretna equal protection.

of "preferred candidate." The relevance of race in this passage is linked to the voters. This is only appropriate, since the statute under interpretation here is, after all, the *Voting Rights Act.* The City of Gretna was held to another definition of racial polarization:

> "Although racial polarization is defined as *beginning* where blacks and whites vote differently from each other in relation to the race of the candidates, it is the demonstrable unwillingness of a substantial number of the racial majority to vote for any minority race candidate or any candidate identified with minority race interests [that] is the linchpin of vote dilution by districting. . .
>
> "Unless it can be shown that an election occurred in which a white candidate ran on issues strongly affecting the black community and with an open, positive and strong identification with the black community -- which has not been shown in this matter -- candidacies of black persons are the proper focus of inquiry concerning the extent to which elections are polarized." *Citizens For A Better Gretna v. City of Gretna, La.* 636 F.Supp. (E.D. La. 1986) 1113, at 1133. (Emphasis in original.)

This passage goes in a rather different direction from that in *Thornburg.* There is an explicit insinuation of the race of the candidate. However, the trial court allowed for the remote possibility that a person of the white race could claim minority preferred status, by showing "an open, positive and strong identification with the black community". It found, however, that this condition had not been shown in Gretna. This is clearly erroneous.

How, one may ask, does a candidate demonstrate his/her "open, positive and strong identification with the black community"? In a democracy with a free system of elections the ultimate verdict is up to the electorate.

Using "bivariate ecological regression"[6] in the only regular Gretna aldermanic election analyzed at trial, it emerged that in 1977, three candidates were well established among black voters—LeBoeuf, Bush, and Jones. LeBoeuf and Bush were, moreover, sponsored by the black community. Jones was denied the endorsement of two black slating groups, the Black Caucus and the Westside Citizens Committee.[7]

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[6] This statistical technique was found to be standard in the analysis of racially polarized voting. See *Thornburg* at 2768, n. 20.

[7] *Record*, Vol. 1, p. 167-168.

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Bivariate Ecological Regression Estimates
of
Pluralities Among Black Voters:
City of Gretna
Aldermanic Election of 1977

Candidate	Plurality (% of Black Vote)
LeBoeuf	70%
Bush	70%
Jones	68%

Source: *Original Brief on Behalf of Defendants/Appellants*, A21.

Of these three candidates, out of a total field of twelve, LeBoeuf and Bush are white, Jones is black. The question begging for resolution is how the trial court came to the conclusion that LeBoeuf and Bush were not running campaigns premised on "open, positive and strong identification with the black community"? Clearly they satisfied Gretna's black voters, and black slating groups, as to their open, positive and strong identification with the black community. On the basis of Supreme Court approved arithmetic, bivariate ecological regression, no other conclusion is tenable.

The circuit court recognized this problem. Its version of what occurred in Gretna is more arithmetically correct, but misstates *Thornburg's* definition of racial polarization. The Fifth Circuit rejected the arithmetic of the trial court and wrote:

> 'In the Gretna elections studied, blacks exercised their right to vote to fill all at-large positions, but only one available candidate was black.

> Thus, it was virtually unavoidable that certain white candidates would be supported by a large percentage of Gretna's black voters. Significance lies in the fact that the black candidate preferred by the minority was defeated by white bloc voting. That blacks also support white candidates acceptable to the majority does not negate instances in which white votes defeat[8] a black preference." *Gretna* 834 F.2d at 502.

It is not hard to discern a line of political thinking in this passage, which is both unsupported by the record and implausible on its face. By no means is it "unavoidable that certain white candidates would be supported by a large percentage of Gretna's black voters." There was nothing in the mechanics of Gretna's electoral law that forced minority voting convergence on two out of eleven white candidates; the only explanation was their open, positive and strong identification with the black community, as demonstrated by "standard" statistical methods. It is axiomatic that if courts are going to adopt statistical methods, they are going to have to live with the results.

What the Fifth Circuit advances as its doctrine of legally significant racial polarization is the idea that the defeat of *any* minority-preferred candidate, rather than their "usual" defeat, is grounds for a Section 2 violation. This is clearly at odds with governing statutory law and *Thornburg*. Minorities are not entitled even to proportional representation;[9] yet the Fifth Circuit advances the notion that *all* minority-preferred candidates are entitled to election; if one does not prevail, the candidate is entitled to a

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[8] Note the crucial absence of the word "usually."

[9] Two overwhelmingly minority-preferred candidates were elected in 1977. This amounted to 40% respresentation for a somewhat less than 30% minority.

more sanguine electoral mechanism. This warps the *Voting Rights Act* into a fancied *Candidate Protection Act.*

It might be argued that there is an alternative interpretation of the circuit court's position. It may be hypothesized that, had Jones been white, no finding of vote dilution would have emerged. There is, indeed, reason to think that this would have been the position of the Fifth Circuit, and, indeed, the trial court. (Petitioners will address this point immediately below.) But this would imply that the rights of minorities to non-dilutive electoral mechanisms are contingent on the race of the candidate. Can it be the thrust of the Constitution, the intent of the Congress, and the view of the Supreme Court that minority citizens cannot press a claim of vote dilution with preferred candidates of the white race?

b. The Race of the Candidate

The Court of Appeals is obviously chary of the limb it has hung its reasoning on. The circuit court noted Justice Brennan's view of the matter of race-of-candidate:

> "It is the *status* of the candidate as the *chosen representative of a particular racial group,* not the race of the candidate, that is important." *Thornburg* at 2783-2784. (With three Justices concurring and one Justice concurring in part and concurring in the judgment. Emphasis in original.)

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8 Note the crucial absence of the word "usually."

9 Two overwhelmingly minority-preferred candidates were elected in 1977. This amounted to 40% representation for a somewhat less than 30% minority.

For reasons that are not perfectly clear, the circuit court wrote that Justice Brennan did not carry majority support for that statement; and it instead pointed to a passage from Justice White disavowing "interest group politics." *Id.* at 2783-2784. Petitioners submit that the "interest group" involved in Gretna is candidates, not voters. But what is at stake in the instant case is, precisely, the rights of voters. The Fifth Circuit has crafted a version of the law that creates protections for an obvious interest group: candidates, and incumbents, of color.

The reason for the assertion that the Fifth Circuit has confected a Candidate Protection Act lies in its own wording, which is a telling admission that minority voters are not entitled to relief in the absence of candidates of their own race:

> '[W]e conclude that *Gingles* is properly interpreted to hold that the race of the candidate is in general of less significance than the race of the voter -- but only within the context of an election that offers voters the choice of supporting a viable minority candidate. For although the Supreme Court plurality in *Gingles* emphasizes the race of the voters over the race of the candidate, it upholds the trial court finding of vote dilution based upon analyses of only those elections in which *blacks ran.* Justice Brennan's plurality opinion is careful not to state that a black candidate is tantamount to the black preference; but implicit in the *Gingles* holding is the notion that black preference is determined from elections which offer the choice of a black candidate. The various *Gingles* concurring and dissenting opinions do not consider evidence of elections in which only whites were candidates. Hence, neither do we." *Gretna*, 834 F.2d at 504.

From this, it is clear, the Fifth Circuit would not have sustained a vote dilution claim in the City of Gretna had Jones been white, notwithstanding a presumed defeat by a white bloc. Black voters, without black candidates, are naked in the Fifth Circuit.

c. A Limited and Impractical Evaluation of Selected Reality

What was it that led the Fifth Circuit to adopt facts found in, and peculiar to, North Carolina as law in Gretna? Indeed, the facts peculiar to the issue in *Thornburg* were limited to contests which featured candidates of the black race -- dozens of candidates of the black race. See *Thornburg*, Appendix A, at 2782-2783.

In *Thornburg* the Court noted language from the Senate Report: "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality' ". At 2764 *Cit. om.* As matters turned out in North Carolina, the searching and practical evaluation amounted to examinations of black candidacies. But the thrust of the burden of proof scheme in *Thornburg* is towards a "flexible, fact-intensive test for Section 2 violations." *Id.* at 2774.

The Fifth Circuit would interpret *Thornburg* rigidly, so that the ability of blacks to recruit certain whites as their preferred candidates would also function to deprive them of relief under Section 2. But the Supreme Court did not confine review of vote dilution claims to the *facts* enumerated in *Thornburg*. Other facts may also be relevant and may be considered. What *Thornburg* mandates is a searching, practical evaluation of Gretna's past and present reality -- not North Carolina's.

The North Carolinization of Gretna led, in fact, to a very impractical search to muster support for a fatally flawed case against the City. In Gretna itself there were, in the circuit court's view, only two election periods amenable to statistical examination -- and those through rather permissive standards of statistics.[10] One instance was the regular aldermanic election of 1977. The second, in 1979, was a special election to fill one vacant seat.

In both instances there was one (and the same) candidate of the black race. In 1977 he was out-polled among blacks by two other candidates. No one contests this. In 1979 the same black candidate obtained anywhere between 49% - 65% of the black vote.[11] *Gretna*, 834 F.2d at 501-502. The 1977 election is clearly complicated by the *Thornburg* prong of "usual" loss by minority-preferred candidates; two of them won election. The 1979 election is complicated by its extraordinary nature and by the *Thornburg* prong of cohesiveness. Overall the Gretna elections are not persuasive; the case against the City cannot rest, by the accord of all parties to this litigation -- and by the accord of all courts that have reviewed the litigation -- on the thin foundation of two elections featuring one candidate. As the circuit court put it, there was "sparsity of available data." *Id.* at 502.

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[10] Other electoral periods, quite amenable to statistical examination, were excluded on grounds that those elections did not have candidates of the black race.

[11] This 15% spread is not surprising; bivariate ecological regression is a black art. See Wildgen, "Adding *Thornburg* to the Ticket: The Ecological Fallacy and Parameter Control in Vote Dilution Cases", 20 *Urban Lawyer* (Winter, 1988); Engstrom and McDonald, "Definitions, Measurements, and Statistics: Weeding Wildgen's Thicket," 20 *Urban Lawyer*, (Winter, 1988). Wildgen shows one way to commit the ecological fallacy, Engstrom and McDonald show, and endorse, six

Instead, plaintiffs extended their search to include exogenous elections, such as Rev. Jesse Jackson's 1984 bid in Louisiana's non-binding presidential preference primary. At this juncture, the same circuit court that rigidly excluded instances of white candidates pursuing, and winning, the support of Gretna's black voters, turned uncharacteristically flexible and argued that two exogenous elections (Jackson's and the race of Ben Jeffers, a candidate for Louisiana Secretary of State) were illustrative of local voting patterns. The court ignored, however, contrary exogenous evidence presented at trial: the candidacies of Sylvester Brown and Larry Napoleon "Boogaloo" Cooper (both black), *Gretna* 636 F.Supp. at 1126, n. 31. These candidates were rejected by voters of both races, indicating racial accord. It is inexplicable how these two elections are deemed not illustrative of local voting patterns.

The exclusion from consideration by the Fifth Circuit of the Brown and Cooper exogenous election results may be explained by focusing on a passage from a section remote from its consideration of exogenous elections. In writing of the relevance of the race of candidates, the circuit court speaks of "the context of an election that offers voters the choice of supporting a *viable* minority candidate." See *supra*, at 503. Emphasis added.

The drift of this line reasoning is that one can initiate a results-oriented search for polarization. Where it

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(footnote 11 continued)

additional ways of doing it.

In other instances bivariate ecological regression has demonstrated its manifest unstandardization and unreliability. In Norfolk, homogeneous precinct analysis revealed that one candidate, Joseph Green, received 32.2% of the white vote. Plaintiffs' regression analysis, in a train of three reports, yielded estimates of 20.2%, then 18.7%, and finally 26.5%. See *Collins v. Norfolk*, 679 F.Supp. 557 (E.D.Va. 1988) at 571.

does not exist, its absence can simply be attributed to candidate "non-viability." Here, again, one sees a court, *post-facto*, substituting its political preferences for the electorate's. Who, after all, is the final judge of the "viability" of a candidate? It is the electorate itself. Certainly it was not the intent of Congress that judges could whimsically select, and whimsically reject, verdicts of the electorate. The fundamental fact underlying the Brown and Cooper candidacies was the absence of polarization -- not loss attributable to white bloc voting.[12] If, for the sake of argument, one grants that exogenous elections have probative value, then *all* exogenous elections are relevant, not just selected -- and self-serving -- exogenous elections. Were one to proceed to use exogenous elections in an evenhanded manner, it would emerge, taking Jackson, Jeffers, Brown, and Cooper into account, that there was no pattern of usual loss attributable to bloc voting.

Petitioners take the position that law and precedent argue against resort to exogenous elections. As the following passage shows, there is direct conflict between the Fifth and Eleventh Circuits:

> "The reliance on other elections here is clearly misplaced. Since the City of Carrollton as the city defendant was severed from this lawsuit as a result of a settlement of the parites, it can hardly be said that the plaintiffs' evidence failed because they did not analyze Carrollton city elections. The voting rights statute is violated if a protected class has "less opportunity than other members of the electorate to participate in the political

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[12] Petitioners also bring to the Court's attention the tenuous claim that candidates Jackson and Jeffers had to "viability." In both instances their candidacies could easily be thought of as "offbeat."

> process and to elect representatives of their choice. The inquiry is the Carroll County singular commission form of government, not the City of Carrollton nor other municipality for that matter." *Carrollton v. Stallings,* 829 F.2d 1547 (11th Cir. 1987), at 1558, *cert. denied.* 108 S.Ct. 1111 (1988).

Petitioners submit that exogenous elections violate the spirit and letter of the notion of a "functional" view of the political process. In *Thornburg* the language drawn from previous cases clearly is not sympathetic to attempts to either exculpate or implicate jurisdictions by searching beyond the political unit in a quest for evidence of attainder by consanguinity. The real thrust of this so-called flexibility in interpreting *Thornburg* amounts to collective "corruption of blood," a legal concept anathema to the American constitutional tradition. Communities and their elected leaders are responsible for their own actions under a functional view of the electoral process. They cannot be punished for what happens elsewhere.

The language of *Thornburg* at page 2781 further buttresses petitioners' notion that the City of Gretna is accountable for its behavior, not behavior elsewhere:

> "In *Regester, supra,* we noted that the district court had based its conclusion that minority voters in two multimember districts in Texas had less opportunity to participate in the political process than majority voters on the totality of the circumstances and stated that 'we are not inclined to overturn these findings, representing as they do a blend of history and an *intensely local appraisal of the design and impact of the ... multimember district in the light of past and present reality, political and otherwise.*' " *White v. Regester,* 412 U.S. at 769-770. Emphasis added.

If such an intensely local appraisal cannot convince courts that a Section 2 violation exists, there seems to be no justification for an ever-widening search.

Rather, the proper focus should have been on Gretna's past and present political reality. The candidates'-race focused position of the Fifth Circuit prevented examination in court of Gretna's other aldermanic elections -- as though political reality ceases in the absence of candidates of the black race. This is contrary to the Fifth Circuit's own carefully crafted *Velasquez* doctrine, which requires a district court to make detailed findings of fact and to discuss all substantial evidence contrary to its decision. *Velasquez v. City of Abilene,* 725 F.2d 1017 (5th Cir. 1984).

REASONS FOR GRANTING THE PETITION

(1) The Court Below Erroneously Failed To Apply The Threshold Standards for a Finding Of Impermissible Vote Dilution Established In *Thornburg v. Gingles.*

Thornburg v. Gingles is unambiguous in requiring that plaintiffs demonstrate the existence of a geographically compact, politically cohesive minority group that usually sees its preferred candidates defeated due to the interaction of racial polarization and a challenged electoral mechanism.

In *Gretna* no pattern of usual loss could be demonstrated. As a result, the court below impermissibly narrowed the scope of evidence to candidates of the black race, and impermissibly widened the scope of evidence to exogenous elections.

(2) A Conflict Exists Among Circuit Courts as to The Relevance of Exogenous Elections.

In the trial court, and in the Fifth Circuit, it was determined that there was a sparsity of evidence in the City of Gretna's electoral record. One person, and the recipient of a plurality of votes from a non-cohesive minority in a second, special, election, was not deemed a sufficient factual basis for overturning Gretna's at-large system. So, both the district court and the Fifth Circuit turned to exogenous elections. In the Eleventh Circuit such exogenous elections are not deemed relevant. *Carrollton Branch of NAACP v. Stallings, supra.*

The reasoning of the Eleventh Circuit is limpidly clear. The responding party in vote dilution litigation is responsible for its collective behavior. It cannot exculpate itself by pointing to the absence of Section 2 violations in neighboring jurisdictions; *mutatis mutandis,* a jurisdiction cannot be subject to corruption of blood by the presumed presence of Section 2 violations in neighboring jurisdictions.

The reasoning behind the Fifth Circuit's open-ended policy of searching the horizon for evidence of racial polarization is premised on "flexibility" in interpreting Section 2 and *Thornburg.* As emerges in the next point, the Fifth Circuit haphazardly mixes legal flexibility with factual rigidity.

(3) This Case Raises Important And Unresolved Questions As To The Meaning Of What Constitutes A Minority Preferred Candidate.

It seems clear from statute, and from *Thornburg,* that the class protected by the Voting Rights Act is groups of voters. In *Gretna* it emerges that the class to be

protected is individual condidates of the black race. They can even be protected from black voters, in the Fifth Circuit, should those voters prefer candidates of the white race.

The Fifth Circuit erred in narrowly construing as law facts in the state of North Carolina. The fact that *Thornburg v. Gingles* was, coincidentally, concerned with dozens of black candidates, reflected political conditions in that state. Political conditions in Gretna are not analogous. A fact-intensive review of Gretna's past and present local political reality uncovers a pattern of assiduous courtship of black voters by white candidates – and a pattern of endorsement of those candidates by black slating groups. Denial to these candidates of "minority preferred" status, exclusively on the basis of the color of their skin, is at odds with the ultimate purpose of the Voting Rights Act.

(4) The Decision Below Has Far-Reaching Ramifications For The Status of Minorities and Local Governments under Section 2 of the Voting Rights Act.

The race-of-candidate-conscious and exogenous-election-permissive stance of the Fifth Circuit is, fundamentally, a circumvention of Congress's explicit denial of a right to proportional representation. Should the Fifth Circuit's view of Section 2 stand, the floodgates would be opened to litigation challenging the existence of at-large election provisions throughout the country. No jurisdiction, no matter how racially unpolarized, would be immune to attack on the grounds that some exogenous election -- Jesse Jackson's 1984 bid for the presidency, for example -- demonstrated that a "viable" candidate of the black race was defeated by a majority bloc. It is specifically not the intent of Congress, nor the view of the Supreme Court, that at-large systems are *per se* dilutive mechanisms. But race-

conscious interpretations of exogenous elections, in contravention of legal standards calling for intensely local appraisals, inevitably stain by consanquinity all local governments.

CONCLUSION

The errors committed as a result of the Fifth Circuit's-denial of *Thornburg's* threshold criteria-the establishment of the race-of-candidate as a determining factor in establishing racial polarization, and the insinuation of exogenous elections into the evidentiary base-conflict with the Voting Rights Act, *Thornburg v. Gingles* and the law in other circuits. Just as importantly, these errors amount to a mechanism for the judicial imposition of a race-based formula for proportional representation that does not protect voters so much as it protects candidates.

Petitioners accordingly request this Court to grant their petition for a writ of certiorari to, among other things, clarify the statutory directives of the pertinent provisions of the Voting Rights Act and resolve the conflict among

the circuit courts as to the relevance of exogenous elections and candidate race. The unprecedented and unsubstantiated interpretation of the Voting Rights Act and *Thornburg v. Gingles* by the Fifth Circuit must be corrected and calls for an exercise of this Court's power of supervision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 6th day of October, 1988, served two copies of the foregoing Petition upon the following, by placing same in the United States mail, properly addressed and first class postage prepaid:

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JON A. GEGENHEIMER

APPENDIX A

CITIZENS FOR A BETTER GRETNA
et al., Plaintiffs-Appellees,

v.

CITY OF GRETNA, LOUISIANA, et al.,
Defendants-Appellants.

No. 86-3863

United States Court of Appeals,
Fifth Circuit.

Dec. 23, 1987.

Black voters brought action under Voting Rights Act challenging city's at-large aldermanic elections. The United States District Court for the Eastern District of Louisiana, 636 F.Supp. 1113, Robert F. Collins, J., found that election system violated Act, and city appealed. The Court of Appeals, Jerre S. Williams, Circuit Judge, held that: (1) fact that white candidates received higher percentage of black vote than black candidate in aldermanic election did not negate finding of racial bloc voting; (2) evidence of nonaldermanic elections involving black candidates was admissible, where district court had statistical data of only two city aldermanic elections; and (3) at-large aldermanic elections violated § 2 of Voting Rights Act.

Affirmed.

Jon A. Gegenheimer, City Atty., Gretna, La. for defendants-appellants.

Harold E. Molaison, Gretna, La., for Mayor Ronnie C. Harris.

Alice M. Jacobs, Jack W. Jernigan, III, Ronald L. Wilson, New Orleans, La., for plaintiffs-appellees.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before GOLDBERG, JOHNSON and WILLIAMS, Circuit Judges.

JERRE S. WILLIAMS, Circuit Judge:

In this minority vote dilution case, the City of Gretna, Louisiana appeals the finding that at-large elections of Gretna aldermen violate § 2 of the Voting Rights Act of 1965 as amended in 1982.[1] This Circuit set out guidelines for evaluating minority vote dilution claims in *Zimmer v.*

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[1] Section 2, as amended, 96 Stat. 134, reads as follows:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in sub-section (b).

(b) A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973.

McKeithen, 485 F.2d 1297 (5th Cir.1973) (en banc) *aff'd on other ground sub nom, East Carrol Parish School Board v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976) (per curiam). The district court followed *Zimmer* guidelines in finding a § 2 violation within Gretna's at-large aldermanic election scheme.

Closely following after the district court's opinion of May 12, 1986, 636 F.Supp. 1113, is the Supreme Court's § 2 minority vote dilution case. *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). Appellant City of Gretna claims *Gingles* replaces the pre-existing vote dilution analysis of *Zimmer*, and necessitates remand of this case. We disagree, and affirm the district court's decision.

At the heart of a § 2 vote dilution claim lies the issue of whether minorities have an equal opportunity to elect their candidates of choice. *Gingles* set out a three-part foundation for proving a § 2 vote dilution claim: first, that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; second, that the minority is politically cohesive; and third, that the majority votes sufficiently as a bloc usually to defeat the minority preferred candidate. *Gingles*, 106 S.Ct. at 2766-67. Based upon our reading of *Gingles*, we find the district court's analysis sufficient to establish a violation of § 2 existing in the at-large elections of Gretna aldermen. We first address the effect of *Gingles* on the frame-work previously set out by *Zimmer*. Then we discuss *Gingles'* emphasis on racial bloc voting and its application to the situation in Gretna.

1. *Background*

Appellees Citizens For a Better Gretna[2] brought this class action on behalf of black registered voters in the City of Gretna. The class alleged violations of § 2 of the Voting Rights Act of 1965 as amended in 1982, 42 U.S.C. § 1983, and the Fourteenth and Fifteenth Amendments of the United States Constitution. The district court upheld the class' claim for relief under § 2 of the Voting Rights Act, and did not address the § 1983 claim or the constitutional claims.

The trial court determined the § 2 violation from factual findings structured along *Zimmer* guidelines.[3] We find none of these determinations to be clearly erroneous.[4]

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[2] Citizens for a Better Gretna is an unincorporated association of citizens of the City of Gretna. Its members include Jerome Black, Noreen V. Boyd, Sylvester Brown, Burnell Darensburg, Jr., Alex Gourgis, Sr., Bernice Gourgis, Warren G. Lombard, Leo Jones, Charles L. Mar, Verta M. Mar, and Sammie Walker. Each is a resident of the City of Gretna and a registered voter. They sue individually and as representatives of the class.

Appellants are Mayor William J. White and Aldermann James Bush, Sr., Salvador Marchese, Jr., Louis LeBoeuf, Jr., Gerard E. Schexnayder, and Hubert F. Uzee. They are sued in their individual capacities and as representatives of the City of Gretna.

[3] We summarize the trial court's findings in Part II of this opinion, but a detailed account of conditions in Gretna is contained in the district court's opinion, *Citizens for a Better Gretna v. City of Gretna*, 636 F.Supp. 1113, 1116-1123 (E.D.La.1986). Gretna's history of official discrimination in voting, housing, and education casts lingering effects upon the city's black population: housing remains segregated: four times more blacks than whites lived below poverty level in Gretna in 1980; Gretna's black voter turnout was 22 percent lower than white voter turnout in 1981, and 26 percent lower in 1977.

[4] The Supreme Court in *Gigles*, upheld the "clearly erroneous" test of Federal Rule of Civil Procedure 52(a) for review of factual findings of § 2 claims, as well as for the ultimate determination of vote dilution. 106 S.Ct. at 2781. A factual finding is clearly erroneous if it is unsupported by the record or creates the firm convition that a mistake has been made. *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct 525, 541-42, 92 L.Ed. 746 (1948). We find neither to be the case with the district court's determinations.

Hence, the issue presented is whether the factual findings support a § 2 violation under *Gingles*.

II. *Gingles & Zimmer*

Appellant urges this Court to reverse the district court opinion because it relies on *Zimmer*. We are asked to remand the case for consideration under *Gingles*. We cannot agree that the Supreme Court in *Gingles* made the *Zimmer* analysis obsolete. In fact, the Court relied substantially on *Zimmer* as a foundation for the analytical framework prescribed for § 2 claims.[5]

Taken from the Senate Judiciary Committee Report accompanying the 1982 amendment of the Voting Rights Act, the factors to be considered in evaluating a § 2 claim include the following:

> (1) The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> (2) The extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> (3) The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the majority group;

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[5] *Gingles* upheld the "results test" set out in *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973) and refined by *Zimmer*, whereby a Voting Rights Act violation may be shown by discriminatory effect. *Gingles*, 106 S.Ct. at 2759.

(4) If there is a candidate slating process, whether the members of a minority group have been denied access to that process;

(5) The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

(6) Whether political campaigns have been characterized by overt or subtle racial appeals;

(7) The extent to which members of the minority group have been elected to public office in the jurisdiction.

The *Gingles* opinion traced the Senate Report guidelines (*Zimmer* factors)[6] in evaluating the North Carolina legislative election scheme there at issue. The Court found a § 2 violation based upon the totality of circumstances in North Carolina districts: "racially polarized voting, the legacy of official discrimination in voting, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multi-member districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice." *Gingles*, 106 S.Ct. at 2782.

The district court found similar conditions existing

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[6] Footnote 4 in *Gingles*, 106 S.Ct. at 2759 states: "These factors were derived from the analytical framework of *White v. Regester*, [cite omitted] as refined and developed by the lower courts, in particular by the Fifth Circuit in *Zimmer v. McKeithen*. . . ."

in Gretna by following virtually identical guidelines. We briefly summarize these factual findings: (1) No black person has ever been elected alderman in Gretna, despite its population being thirty percent black. (2) Only two black candidates have run for alderman in Gretna: these in three elections. (3) Of the three Gretna aldermanic elections with black candidates, only two were capable of being statistically analyzed. (4) The two elections involved black candidate Leo Jones. He received the support of a majority of Gretna's black voters but little or no support from white voters. (5) In the 1984 presidential primary and the 1979 race for Louisiana Secretary of State, Gretna's black voters overwhelmingly supported black candidates and white voters largely did not. (6) Statistical data presented to the trial court in a correlation and regression analysis and in a homogenous precinct analysis support the existence of racial polarization (racial bloc voting) in Gretna's elections. (7) A history of *de jure* and *de facto* discrimination contributes to depressed socio-economic conditions for Gretna's blacks and a low black voter turnout. (8) An unofficial slating system excludes black candidates from Gretna city elections. (9) The Gretna majority vote requirement combines with the at-large system to produce dilution of black voting power. These factual findings are amply supported by the record, so we next consider the district court's finding of legally significant racial bloc voting.

III. *Bloc Voting*

Racial bloc voting is the linchpin of a § 2 vote dilution claim, and plaintiffs must prove it. *Gingles*, 106 S. Ct. at 2764. The district court found significant racial bloc voting in Gretna based upon statistical data presented in

a correlation and regression analysis[7] and a homogenous precinct analysis.[8]

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[7] Correlation and regression analysis expresses the degree of relationship between two variables. The two variables in this case are (1) proportion of the voting age population in Gretna that is black (the independent variable) and (2) electoral support for the black candidate (the dependent variable). Statistical coefficients, "r" and "b", summarize the consistency and strength of these two variables. The "r" coefficient measures how consistently the percentage of voters supporting the black candidate (the dependent variable) varies with the black proportion of the voting age population (the independent variable). There is a positive relationship between these two variables if the percentage of voters supporting a black candidate tends to increase as the black percentage of the voting age population in the precinct increases. If the percentage of the voters supporting the black candidate decreases as the percentage of the black voting population increases, then a negative relationship exists. The more consistent the tendency, the greater the value of the "r" which can range from + 1.0 (perfectly consistent positive relationship) through 0.0 (no relationship) to -1.0)perfectly consistent negative relationship). Appellee's expert reported "r" values of .963 and .926 for the aldermanic elections of 1979 and 1977 respectively. For criticism of the "r" factor, see *Jones v. City of Lubbock,* 730 F.2d 233 (5th Cir.1984).

The "b" coefficient estimates how strongly these two variables are related; that is, the extent to which the percentage of voters supporting the black candidate can be expected to change in response to changes in the black percentage of the voting age population. Thus, a "r" reading of + 1.0 shows a perfect correlation between increase in the number of black voters and increase in votes for the black candidate; the "b" reading estimates how much of an increase in votes for the black candidate will result from each incremental increase in the percentage of black voters. Appellee's expert presented "b" values of .590 for 1979 and .539 for 1977. the measures were then plotted on a graph (scattergram). *See Gretna, supra,* 636 F.Supp. at 1136-37 (graphs).

[8] Although the district court mainly relied upon appellee's regression analysis for its finding of bloc voting, it considered the homogenous precinct analysis to be supportive of that finding. *Gretna,* 636 F.Supp. at 1128-29. The homogenous precinct analysis examined 1979 and 1977 election results from Gretna's all-white precincts and found the black candidate to finish last in every case. The analysis also examined results from Gretna's two majority black precincts and estimated Jones to have garnered 65.9 percent of the black vote in those precincts in 1979.

Appellant claims the district court's finding of bloc voting fails to conform to the standards set out by the Supreme Court in *Gingles*. Appellant specifies three deficiencies in the district court's analysis: (1) the district court based its finding of bloc voting on the statistical methods of appellee's expert, which are not the same methods as those relied upon by the Supreme Court in *Gingles*; (2) the district court considered statistical evidence of racial bloc voting in non-aldermanic elections, specifically the 1984 presidential primary in which Jesse Jackson ran and the 1979 race for Louisiana Secretary of State featuring black candidate Ben Jeffers; (3) by looking only at elections in which blacks were candidates, the district court focused on the race of the candidate rather than the race of the voter, which is contrary to *Gingles*. We address these claims in turn.

A. *Statistical Analyses*

The statistical methods applied in Gretna vary to some extent from those used in *Gingles*. *The Supreme Court in Gingles* stated the purpose of the bloc voting inquiry to be two-fold: "To ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates." 106 S.Ct. at 2769. The Court did not mandate any particular statistical method for evaluating vote dilution claims.[9] It merely

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[9] The *Gingles* Court affirmed a finding of bloc voting in North Carolina based upon statistical analyses of fifty-three general and primary elections involving black candidates conducted over three election years, in six multi-member districts. The methods of analysis used were extreme case analysis and bivariate ecological regression analysis. *See* 590 F.Supp. 367-72. Extreme case analysis focused on voting in racially segregated precincts; and regression analysis used racially segregated and racially mixed precincts to determine whether blacks and whites (continued)

accepted the methods presented, noting them to be standard in the literature. *Gingles*, 106 S.Ct. at 2768 n. 20.

Appellants attack the validity of the regression analysis presented by appellee's expert and relied upon by the district court. This correlation and regression analysis correlates by precinct the race of the voter with votes received by a particular candidate.[10] Appellant claims that its regression analysis is superior to that of appellee's expert. Resisting the obfuscation created by dueling statisticians, we address appellant's core criticism: Leo Jones, who was one of two blacks who ran for Gretna alderman and the only black aldermanic candidate whose election results could be analyzed statistically, was *not* the aldermanic preference of Gretna's black voters.

Jones ran for alderman in 1977 and in 1979. Appellee's expert concludes that in 1979, Jones received 60 to 65 percent of the black vote and 1 percent of the white vote; in 1977 he received 65 to 67 percent of the black vote and

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(footnote continued)[9] voted differently with respect to a dandidate's race. These complementary methods measured correlation between voters of specified race and votes for a candidate of particular race. Political cohesiveness was determined from evidence showing black support for black candidates to range between 71 percent and 92 percent in the primaries and 87 percent to 96 percent in the general elections. The Court accepted evidence of white bloc voting, which showed that an average of 81.7 percent of white voters did not vote for black candidates in the primaries, and two-thirds of the white voters did not vote for black candidates in the North Carolina general elections.

[10] *See* footnote 7 *supra*.

11 to 12 percent of the white vote.[11] Appellant's expert, howerer, did his own bivariate regression analysis of the 1979 election and concluded that Jones only obtained about 49 percent of the black vote and 1.5 percent of the

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APPELLEES' RESULT OF REGRESSION ANALYSIS FOR THE 1977 AND 1979 GRETNA ALDERMANIC ELECTIONS

Year	Correlation Coefficient	Unstandardized Regression Coefficient	Standard Error of the b	*Intercepts Left (white) Right (black)
1979				
Unweighted:				
	r=.963	b=.590	(.050)	1.0%
				60.0%
Weighted:				
	r=.962	b=.648	(.002)	0.9%
				65.7%
1977				
Unweighted:				
	r=.926	b=.539	(.066)	11.2%
				65.1%
Weighted:				
	r=.908	b=.553	(.003)	12.0%
				67.2%

*The far right column represents the percent of votes won by black candidate Leo Jones. In each row, the top figure is Jones' percent of the white vote, and the lower figure represents his percent of the black vote.

white vote.[12] Appellant cites its analysis as proof that Jones was not the black preference.

[1] According to the Supreme Court in *Gingles*, however, bloc voting can be proved in part by showing that a "significant number of minority group members usually vote for the same candidate. . . ."[13] Both appellant's and appellee's regression analyses reveal a "significant number " of blacks voting for Jones. This qualifies Jones as a black preferred candidate.

[2] Appellant also claims that Jones was not the black preferred candidate in the 1979 aldermanic election because two white candidates received a higher percentage

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APPELLANT'S RESULTS OF BIVARIATE ECOLOGICAL REGRESSIONS AS APPLIED TO GRETNA ALDERMANIC ELECTIONS

Recapitulation of Bivariated Ecological Regression Analyses

CANDIDATE	WHITE PREFERENCE	SLOPE	BLACK PREFERENCE	FRACTIONALIZATION WHITE	BLACK
Jones 79	1.524	0.478	49.324	0.030	0.500
LaBruzza 79	16.034	-0.106	5.434	0.269	0.103
Marchese 79	30.782	-0.255	5.282	0.426	0.100
Weigel 79	3.087	0.120	15.087	0.060	0.256
Kennedy 79	9.78	-0.052	4.58	0.176	0.087
Leger 79	1.795	0.014	3.195	0.035	0.062
Ward 79	26.448	-0.228	3.648	0.389	0.070
Züfle	4.075	-0.043	-0.225	0.078	-0.005

Note:

13 *Gingles, supra*, 106 S.Ct. at 2769. We realize that this statement imposes the requirement of a pattern of bloc voting by its mention of "usually." We find evidence, beyond Jones performance in elections, that establishes a pattern of bloc voting. This evidence together with the Supreme Court's recommendation of flexibility for § 2 cases, are discussed in Part III B of this opinion, *infra*.

of the black vote than was garnered by Jones.[14] This does not negate the district court's finding of racial bloc voting. Again, *Gingles* defines bloc voting as white majority bloc voting that defeats minority preferred candidates. 106 S.Ct. at 2767. In a multiple seat election such as Gretna's aldermanic race, the minority necessarily will have more than one preferred candidate. In the Gretna elections studied, blacks exercised their right to vote to fill all at-large positions, but only one available candidate was black. Thus, it was virtually unavoidable that certain white candidates would be supported by a large percentage of Gretna's black voters. Significance lies in the fact that the black candidate preferred by the minority was defeated by white bloc voting. That blacks also support white candidates acceptable to the majority does not negate instances in which white votes defeat a black preference.

B. *Exogenous Elections*

Appellee's analyses of other elections in which Gretna citizens had the opportunity to vote for a black candidate support the finding of a pattern of racial bloc voting in Gretna.[15] Although exogenous elections alone could not prove racially polarized voting in Gretna aldermanic elections, the district court properly considered them as additional evidence of bloc voting—particularly in light of the sparsity of available data.

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[14] Appellant demonstrates that, using appellees method of analysis, white candidates Bush and LeBouef each took 70% of the black vote in Gretna's 1977 aldermanic election, whereas Jones only received approximately 67%.

[15] In the 1984 presidential primary, Gretna's black voters overwhelming supported Jesse Jackson; Gretna's white voters did not. In the 1979 election for Louisiana Secretary of State, a majority of Gretna's black voters supported black candidate Ben Jeffers; and Gretna's white voters did not.

Black candidates have entered Gretna aldermanic elections on only three occasions.[16] Statistics are available for two of those elections, Jones in 1977 and Jones in 1979. Appellant claims that a showing of bloc voting cannot be premised solely on these two elections because the *Gingles* opinion requires "a searching practical evaluation of 'past and present reality.' " 106 S.Ct. at 2764. Two elections, it claims, do not reflect past and present reality.

Gingles, however, suggests flexibility in the face of sparse data: "where a minority group has begun to sponsor candidates just recently the fact that statistics from only one or a few elections are available for examination does not foreclose a vote dilution claim." 106 S.Ct. at 2770 n. 25. Justice Brennan speaking for the Court, ecplains the need to tailor a § 2 analysis that will fit the issues of each particular vote dilution case. In this case, appellants would have us interpret *Gingles* rigidly so that the inability of Gretna's blacks to participate as aldermanic candidates would also function to deprive them of relief under § 2. But the Supreme Court did not confine review of vote dilution claims to the factors enumerated in the opinion: 'While the

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(footnote 15 continued)

Election	Results of Exogenous Elections White(%)	Black(%)
1984-Jackson		
* Unweighted	1.6	95.5
* Weighted	1.7	95.3
1979-Jeffers		
Unweighted	7.5	70.1
Weighted	7.9	70.1

*The term "unweighted" as used here means that each precinct in Louisiana was treated as an equal unit in determining these values, regardless of the actual number of voters cast in those precincts. The term "weighted" is used to take into account differences in the number of votes across precincts.

16 Edwin Romain in 1973, and Leo Jones in 1977 and 1979.

enumerated [*Zimmer*] factors will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims, other factors may also be relevant and may be considered." *Gingles,* 106 S.Ct. at 2764 (footnote omitted).

[3] In light of the flexible standard advised by Gingles, the district court properly considered the two non-aldermanic elections, Jackson in 1984 and Jeffers in 1979. Because the district court had statistical data of only two Gretna aldermanic elections to consider, it properly looked to voting patterns in two additional elections in which Gretna had the opportunity to vote for a black candidate. This evidence is relevant to showing that blacks and whites in Gretna vote differently and in bloc. Further, we are persuaded by appellee that although the Jeffers and Jackson results are not those of Gretna aldermanic elections, they qualify as a local appraisal because they reflect local voting patterns.

We need not conclude that election results from outside the challenged electoral system are always appropriate for consideration under § 2. In this case, however, with sparse relevant statistical data, the district court rightly considered exogenous elections.

C. *The Race of the Candidate*

We consider Jones to be an aldermanic candidate sponsored by Gretna's minority group because he received a significant portion of the black vote,[17] and because he is black. Appellant claims that considering the race of the

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[17] Relying on appellees' statistics, Jones received roughtly 65% of the black vote in Gretna in 1977 and 1979. Following appellant's statistics, Jones received only 49% in 1979. Both sets of statistics indicate Jones as a black aldermanic preference. *See supra,* discussion at Part III A of this opinion.

candidate is inconsistent with *Gingles'* recommendation to consider only the race of the voter. Appellant claims the district court erred in determining racial bloc voting from only those elections in which blacks were candidates.

In a plurality section of the *Gingles* opinion, Justice Brennan notes that although the black minority preferred candidate is usually black, the race of the votor—rather than the race of the candidate—is the proper focus. Hence the black preferred candidate need not necessarily be black: "Under § 2, it is the *status* of the candidate as the *chosen representative of a particular racial group,* not the race of the candidate, that is important." *Gingles,* 106 S.Ct. at 2776.

Justice Brennan does not, however, carry majority suppport for this statement. Justice White specifically disavows it as indicative of interest group politics. *Gingles,* 106 S.Ct. at 2783-84 (White, J., concurring). And Judge Higginbotham, in his dissent to this Circuit's recently vacated vote dilution case,[18] shares Justice White's apprasial, warning of the potential chaos created by a lack of Supreme Court consensus on this aspect of racial bloc voting. Such forecasts properly raise concerns about the dangers in advancing interest group politics or enforcing proportional representation.[19]

[4] Mindful of these concerns, we conclude that *Gingles* is properly interpreted to hold that the race of the

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[18] *United Latin American Cities v. Midland Independent School District,* 812 F.2d 1494, 1504 (5th Cir. 1987) (Higginbotham dissenting).

[19] Section 2 concludes with the following: "*Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973.

candidate is in general of less significance than the race of the voter—but only within the context of an election that offers voters the choice of supporting a viable minority candidate. For although the Supreme Court plurality in *Gingles* emphasizes the race of the voter over the race of the candidate, it upholds the trial court finding of vote dilution based upon analyses of only those elections in which *blacks ran.* Justice Brennan's plurality opinion is careful not to state that a black candidate is tantamount to the black preference; but implicit in the *Gingles* holding is the notion that black preference is determined from elections which offer the choice of a black candidate. The various *Gingles* concurring and dissenting opinions do not consider evidence of elections in which only whites were candidates. Hence, neither do we.

IV.

[5] We conclude that the district court was not clearly erroneous in finding that Gretna's at-large aldermanic elections violate § 2 of the Voting Rights Act. The district court decision was correctly based on a totality of the circumstances, delineated by *Zimmer* factors. Most notable among those factors is the presence of racial bloc voting in Gretna's aldermanic elections. We also note that in the entire history of Gretna, with a 30 percent black population, no black has ever been elected to municipal office. Further, we, like the Supreme Court in *Gingles,* recognize the district court's familarity with political realities of the local area. 106 S.Ct. at 2782. We affirm the district court's finding that at large elections of Gretna aldermen are violative of § 2. We affirm its judgment enjoying the at-large system and approcing the city's proposed redistricting plan.[20]

AFFIRMED.

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[20] The City of Gretna plan provides for a five member board of aldermen, consisting of four aldermen elected from separate districts and one alderman elected at-large.

APPENDIX B

CITIZENS FOR A BETTER GRETNA, et al.,

v.

CITY OF GRETNA, LOUISIANA, et al.

Civ. A. No. 84-4901

United States District Court,
E.D. Louisiana.

May 12, 1986.

Black voters brought suit under Voting Rights Act challenging city's "at-large" election system. The District Court, Robert F. Collins, J., held that "at-large" election system, together with majority vote requirement for election to board of alderman, tended to dilute political strength of minority groups, in violation of Voting Rights Act.

Order accordingly.

Alice M. Jacobs, Suzanne Weiner, Jack W. Jernigan, Ronald L. Wilson, New Orleans, La., for plaintiffs.

Jon A. Gegenheimer, City Atty., City of Gretna, Gretna, La., for defendants.

OPINION

ROBERT F. COLLINS, District Judge.

When Congress passed the Voting Rights Act[1] in 1965 to eliminate voting discrimination and to affirm the fundamental right of each citizen to participate fully in elections, President Lyndon Johnson hailed its enactment as a "triumpth for freedom as huge as any ever won on any battlefield."[2] The weapon Congress utilized to secure that freedom was Section 2 of the Act, which created a right of action for private citizens or the government to challenge voting practices or procedures.[3] This case evokes a consideration of the extent to which plaintiffs have properly used that weapon (in its amended form) to attack the election procedure of the Board of Aldermen for the City of Gretna, Louisiana. Specifically, the Court is called upon to determine under what circumstances does a governmental election scheme operate to minimize or cancel out the voting strength of racial minorities within the City of Gretna.

This class action is brought pursuant to Section 2 of the Voting Rights Act of 1965 and the Voting Rights Act amendments of 1982, 42 U.S.C. § 1983 and the Fourteenth and Fifteenth Amendments of the United States Constitution. Plaintiffs, Jerome Black, Noreen V. Boyd, Sylvester Brown, Burnell Darensburg, Jr., Alex Gourgis, Sr., Bernice Gourgis, Warren G. Lombard, Leo Jones, Charles L. Mar, Verta M. Mar and Sammie Walker, are all black

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[1] Pub.L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973-1973bb-1 (1976))(further amended by the Voting Rights Act Amendments of 1902, Pub.L. No. 97-205, 96 Stat. 131) (codified at 42 U.S.C. §§ 1973, 1973b, 1973aa-1a-6 (West Supp.1983.)).

[2] Senate Comm. on the Judiciary, Report on S. 1992, S.Rep. No. 417, 97th COng., 2nd Sess. 4 [hereinafter cited as S.Rep.], reprinted in 1982 U.S.Code Cong. & Adm.News 177.

[3] See, *Section 2 of the Voting Rights Act: An Analysis of the 1982 Amendment*, McKenzie & Krauss, 19 Harvard Civil Rights—Civil Liberties Law Review 155 (Winter 1984).

citizens of the United States and the State of Louisiana. They are residents of the City of Gretna and are registered to vote there. Citizens for a Better Gretna is an unincorporated association of citizens of the City of Gretna. Its members include the above named plaintiffs. The plaintiffs sue individually and as representatives of the class of black registered voters of the City of Gretna, Louisiana.

The City of Gretna is a municipal corporation formed under the laws of the State of Louisiana, particularly the Lawrason Act, LSA-R.S. 33:51 *et seq.* As such, it is a political subversion of the State of Louisiana. Defendant, William J. White, is the Mayor and Chief Executive Officer of the City of Gretna, and he is sued both in his individual and official capacities. James Bush, Sr., Salvadore Marchese, Jr., Louis LeBoeuf, Jr., Gerald E. Schexnayder and Hubert F. Uzee are Aldermen of the City of Gretna, and they are sued both in their individual and representative capacities.

Jurisdiction is conferred on this Court pursuant to 42 U.S.C. § 1973j(f) and 28 U.S.C. §§ 1331, 1343 and 1344.

The gravemen of plaintiffs' claim is that the "at-large" election system, together with the majority vote requirement for election to the Board of Alderman (LSA—R.S. 18:511 A), currently employed by the City, effectively prevents blacks from participating in the political process in a reliable and meaningful fashion in two basic ways. First, it ensures that the white voters will continue to elect all members to the Board of Alderman, while blacks will continue to have neither the opportunity nor ability to be elected; and secondly, by doing so, it operates to minimize or cancel out the black voting strength in the City by denying blacks the opportunity to elect blacks to the Board of Aldermen, even though they comprise a significant portion

of the total population of the City—all in a manner that violates rights of the plaintiffs secured by Section 2 of the Voting Rights Act of 1965, amended June 29, 1982, 42 U.S.C. § 1973 (Section 2 of the Voting Rights Act), 42 U.S.C. § 1983, and the Fourteenth Amendments to the United States Constitution.

[1] This Court concludes, on the basis of factual findings, that the "at-large" system of election to the Board of Alderman in the City of Gretna violates Section 2 of the Voting Rights Act, and that plaintiffs are therefore entitled to appropriate relief, including an order enjoying defendants from conducting elections under the existent "at-large" system. Because the Court upholds plaintiffs' claim for relief under Section 2 of the Voting Rights Act, we need not address their other statutory and constitutional claims seking the same relief.

The Standard of Proof under Section 2

The language of Section 2(b), supplemented by its legislative history, provides the statndard of proof for finding a Section 2 violation. The Senate Report delineates specific factors which a court should consider in determining whether the political process of a state or subdivision thereof violates Section 2. In determining whether, "based on the totality of circumstances," a subdivision electoral mechanism does so "result" in racial vote dilution, Congress intended that courts should look to the interaction of the challenged mechanism with those historical, social and political factors generally suggested as probative of dilution in *White v. Regester,* 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973) and subsequently elaborated by the former Fifth Circuit in *Zimmer v. McKeithen,* 485 F.2d 1297 (5th Cir.1973) (en banc), *aff'd on other grounds sub nom., East Carroll Parish School Board v. Marshall,* 424

U.S. 636, 96 S.Ct. 1983, 47 L.Ed.2d 296 (1976) (per curiam). These factors typically include, per the Senate Report accompanying the compromise version enacted as amended Section 2:

1. the extent of any history of official determination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been charazterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.[4]

"Zimmer Factors"

The Court finds the following circumstances to have contributed to dilution of minority voting strength in Gretna by use of the at-large scheme for election of aldermen and incorporates them as Findings of Fact in this case.

FINDINGS OF FACT

Past Discrimination and Its Lingering Effects

A history of discrimination is important evidence of both discriminatory intent and discriminatory result. Past discrimination can severely impair the present-day ability of minorities to participate on an equal footing in the political process. Past discrimination may cause blacks to register or vote in lower numbers than whites. Indeed, past discrimination may manifest itself in present-day socio-economic disadvantages, which in turn can reduce participating and influence in political affairs. The historical record of discrimination in the State of Louisiana and the

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[4] Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.
>
> whether the policy underlying the state or political subdivision's use of such voting qualification prerequisite to voting, or standard, practice or procedure is tenuous.

While these enumerated factors will often be the most relevant ones, in some cases other factors will be indicative of the alleged dilution. S.Rep. No. 97—417 at 28—29, U.S.Code Cong. & Adm.News 1982, pp. 206-207 (footnotes omitted).

Parish of Jefferson is undeniably clear, and the record suggests it has not ended even now.

The history of black citizens' attempts, in Louisiana since Reconstrution, to participate effectively in the political process and the white majority's resistance to those efforts is one characterized by both *de jure* and *de facto* discrimination. Indeed, it would take a multi-volumed treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana's political process. 'Plaintiffs' expert, historian Dr. Raphael Cassimere, has traced that history very clearly and cogently to its genesis-slavery.

Disenfranchisement of blacks as an acknowledged state policy pre-dates the Civil War. Even free blacks who were property owners, were denied the right to vote. Most blacks, consequently, even while ostensibly "free," remained enslaved, bereft of one of the most basic of human rights—the right to vote.

With the advent of post-Civil War Reconstruction and the emancipation of slaves, federal intervention[5] led to some desegregation of schools, integration of public facilities and perhaps most importantly, registration and political participation for blacks within the state. Black suffrage flourished from 1867 to 1898. Black persons were elected to state office, including the position of lieutenant governor. Three black persons were elected to Congress,

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[5] Section 2 of the Fourteenth Amendment promised southern states more representation in Congress if they would repeal laws excluding blacks from voting. Later Congress passed more profound provision within the Fifteenth Amendment, which precluded state authorities from denying—or abridging—the right of citizens to vote on account of race, color or previous conditions to servitude.

although only one of them was ever seated.[6] The white population reacted to the enfrandhisement and social elevation of blacks by forming white leagues to challenge the legitimate state government which had previously been elected by a heavily black electorate. Inevitably, racial tensions sparked violence throughout the State. In 1877, when the feneral government ceased to monitor state government, the White League, previously held in check, assumed legislative control of the state.

Consequently, the period of enfranchisement for blacks which lasted approximately 30 years gradually came to an end. By 1898, thanks in no small part to the drafting of a new constitution, blacks were completely disenfranchised in the State of Louisiana. The Constitution of 1898 created a registration provision which included both education and property requirements; that is, unless individual was exempted by the so-called "grandfather" or "fighting grandfather" clauses. The provision, *designed* to purge blacks from the registration rolls. proved to be extremely effective. For example, in 1897, there were over 130,000

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[6] *See Major v. Treen*, 574 F.Supp. 325, 340 (E.D. La. 1983), testimony of Dr. Raphael Cassimere:

> "With the advent of post-Civil War Reconstruction, black males were permitted to register. Between 1868 and 1896 many black state legislators were elected. Two blacks were elected Lieutenant Governor and one, P.B.S. Pinchback, was selected by the state Senate to fill a vacancy in that position and later served as Acting Governor. Pinchback subsequently was selected to serve in the United States but was not seated. Three blacks claimed seats in the United States House of Representatives but only one, Charles E. Nash, was seated."

Id. at 340, See also, J. Morgan Kousser, The Shaping of Souther Politics: Suffrage Restriction and the Establishment of the One—Party South, 1880-1910 (New Haven, Conn., Yale University Press, 1974).

black registered voters; by 1900, only 3 years later, less than 5,000 black persons remained on the voter rolls.

Following the Supreme Court's invalidation of the grandfather clause in 1915, *Guinn v. U.S.*, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340 (1915), the state legislature drafted a constitution with a sufferage provision which included an interpretation and good morals test. These tests were rarely used during the first 23 years of existence because the party in control, the Democrats, held white-only primaries. Blacks were denied the right to seek office or cast a ballot in any Democratic primary thus prohibiting black participation in the electoral process. The interpretation test was not enforced because it was not necessary to exclude blacks; they were already effectively excluded.

White primaries, however, were abolished in 1944 again igniting statewide enforcement of the interpretation test. In 1954, due to increased black registration, vigorous enforcement of this test was encouraged by a Joint Legislature Committee of the Louisiana legislature. However, because of the small number of black persons living in Jefferson Parish, it was unnecessary for the registrar strenuously to enforce such test.

Beginning with the 1950's and continuing until sometime after the interpretation test was invalidated in 1963, Jefferson Parish blacks, unlike whites, were required by the registrar to state their age exactly in terms of number of years, months and days, and to recite the preamble to the United States Constitution in order to register to vote.

Effects of Discrimination in Facilities, Education, Employment, and Housing

Like other southern states, prior to the passage of the federal Civil Rights Act in 1964, all public facilities, including courthouses, public accommodations, transportation, recreational facilities, schools,[7] and shops were racially segregated throughout Louisiana, some were segregated as late as the 1970's. Blacks were systematically denied access to restaurants, forced to sit in the rear of buses and subjected to separate and unequal facilities. That these disabilities, generally experienced by blacks throughout the State of Louisiana were also experienced by black residents of Gretna, was convincingly attested to by several of the witnesses.[8]

Schools in Jefferson Parish remained segregated until 1971, when integration was ordered by the court in *Dandridge v. Jefferson Parish School Board*, 332 F.Supp. 590, *application denied*, 404 U.S. 1219, 92 S.Ct. 18, 30 L.Ed.2d 23, aff. 456 F.2d 552, *cert. denied*, 409 U.S. 978, 93 S.Ct. 306, 34 L.Ed.2d 240. The Parish response to the *Dandridge* threat of racial integration was to institute sexual segregation at the high school level. Not until 1978 in *Helwig v. Jefferson Parish School Board*, C.A. No. 74-2143 (unpublished Opinion)(E.D.La. 1978), did the Court order these schools be completely integrated.

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[7] Despite the Supreme Court's ruling in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed.2d 873 (1954), school boards throughout the state refused to desegregate in the absence of a court order. Cf. *Major v. Treen*, 574 F.Supp. at 340.

[8] Plaintiff's witnesses, Charles and Verta Mar, lifelong residents of Gretna, testified to the grinding details of everyday life in a segregated system for blacks. Segregation on buses, for example, was enforced with a screen backwards, the black passengers had no choice but to relinquish their seats. Water fountains, restrooms were not only frequently in deplorable condition. Mrs. Mar testified that blacks had to enter restaurants from the rear and were prevented from physicially entering certain stores. If they wished to make a purchase, they were forced to use an exterior window. Parks in the city were segregated and swimming pools were kept segregated until 1973.

Plaintiffs' historian, Dr. Raphael Cassimere, testified that throughout the years of separate school systems, facilities and instruction provided to black children were qualitatively inferior to those provided to whites. Blacks were forced to attend Renwald High School in Marrero which was not only substandard but also uncertified, which meant that its graduates had extreme difficulty in getting into college.[9] In contrast, white students attended an accredited high school within the City of Gretna.

Due in part to the segregated pattern of public education and the general inferiority of *de jure* segregated black schools, the legacy of this system persists even today in Gretna. While a majority of whites over age 25 possess a high school education (54%), only 40% of blacks over age 25 are high school graduates.

Black citizens of Gretna have historically suffered disadvantages relative to white citizens in public and private employment, due in some measure to inadequate education. Blacks generally suffer higher incidences of unemployment and hold lower paying jobs than do whites. In 1960, the median family income for whites in Gretna was $18,524. For blacks, the median income was $9,721, only 52% of the median family income for whites. Only 9.7% of whites in Gretna lived below the poverty line but 34.1% of blacks lived below the poverty level. In 1979, 5.5% of all whites over 16 in the labor force in Gretna were unemployed. For blacks, the figure was 13.3%, more than double that of whites.

Similarly, city hiring patterns underline and perpetuate racial discrimination in Gretna. Despite a 28%

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[9] Mrs. Mar testified that instead of continuing at Rosenwald she commuted to an Orleans Parish School—a two hour commute each day.

black population, only 17% of municipal jobs are held by blacks. None of these are supervisory. Moreover, where only 5% of white city employees are classified as laborers, a full 32% of all black employees of the City of Gretna are classified as laborers. The Gretna Police Department has 86 employees, only five of whom, or 5.81%, are black.

Comparatively, residential housing patterns in Gretna, as with other cities and states with histories of *de jure* segregation, have traditionally been separated along racial lines. That pattern persists today in Gretna. Virtualy all residential neighborhoods are racially identifiable. Blacks are consistently concentrated in low income areas and are conspicuously absent from the more affluent areas of Gretna. The evidence presented at trial further shows that the City of Gretna has done little to help alleviate this problem.[10]

Voting Patterns in Municipal Elections

Defendants urge that any official discrimination that

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[10] In an effort to counter plaintiffs' evidence concerning the effects of discrimination, defendants called two administrators connected with the federally founded Community Development Office: Emmanuel Brown, the Director of that program for Jefferson Parish, and Paul Richards, Director of Development for Gretna, testified concerning the City's use of federal funds for projects in low and moderate income areas of the city. There testimony was apparently offered to show that the projects helped mitigate the lingering effects of historical discrimination because they had some impact on the black community. However, since defendants admitted that the money comes entirely from the federal government; that defendants are required to target funds in "lo-mod" areas in order to obtain them; that the funds constitute in any one year no more than 6% of the Gretna city budget; that Jefferson Parish and not Gretna has the final say concerning which projects are funded, it is difficult to comprehend what, if anything, such testimony says about Gretna's attempts to better housing and other socio-economic conditions for blacks.

may have existed in Gretna prior to the adoption of the Voting Rights Act in 1965 has not impeded black political participation today and consequently "there is no lingering impact of any past discrimination."[11] The record fails to support this conclusion.

While blacks are registered to vote at a rate equivalent to white residents of Gretna, they constitute a much smaller proportion of the actual electorate participating in aldermanic elections because turnout among black registered voters has been substantially below that of white registered voters. Plaintiffs' expert witness, political scientist Dr. Richard Engstrom, presented the following analysis of turnout in the three most recent aldermanic elections. He testified that while blacks constituted 24.7% of registered voters, in 1981, 1979 and 1977, they comprise respectively only 16.3%, 19.7% and 14% of all participating voters. The differences in turnout rates are 21.7% in 1981 (35.8 percent of registered blacks who turned out to vote against 57.5% percent of registered whites who turned out to vote), and 26% in 1977 (based on a weighted regression estimate of 35.9 percent turnout for blacks and 61.9 percent turnout for whites). Another measure of participation, in aldermanic contests where blacks ran, was to calculate the number of votes for aldermanic candidates cast by members of each racial group as a percentage of the possible number of votes for the alderman that group members could have cast given their registration. For example, in 1981, whites cast 54.6 percent of the votes they could have case, but blacks cast 18.4 percent for a difference of 36.1 percent. In 1977, whites cast 59.3 percent and blacks cast 26.1 percent of their possible votes for a difference of 33.2 percent. Whether the measure of partici-

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[11] Defendants' Post Trial Brief at 9, paragraph 38.

pation is simply turnout at the election or the percentage of possible aldermanic votes cast, substantial differences in participation rates consistently appear in the aldermanic elections in Gretna.[11] Thus it is axiomatic "when minorities are faced with almost total exclusion from the ordinary channels of political participation and deprived of any alternative means of exerting influence, their voter turnout and candidacy rates tend to drop." *See,* Minority Vote Dilution 15 (C. Davidson ed. 1984).

Of all the socio-economic factors treated in the above findings, the status of black citizens as a group is lower than that of white citizens as a group. This is true throughout Jefferson Parish, and it is true with respect to the City of Gretna. This lower socio-economic status gives rise to special group interests centered upon those factors. At the same time, it operates to hinder the group's ability to participate effectively in the political process and to elect representatives of its choice as a means of seeking

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[12] Plaintiff's expert historian, Dr. Cassimere, offered one of several possible answers for lower black turnout in aldermanic elections. Dr. Cassimere testified that elected chief's of police in Louisiana towns and cities are perceived generally by black communities to be extremely powerful. The Police Chief in Gretna, Beauregard Miller, was Chief from 1925 up until his death in 1976, when his son Beauregard Miller, Jr. was appointed to replace him. Miller, Jr. was elected Police Chief the next year and remains in office to this day. Mr. Mar testified that the Millers were perceived by the black community as "power." "We knew no Board of Aldermen, no Mayor," he said. In his mind and in the minds of other winesses, the Chief was the government. Dr. Cassimere explained that the apparent right to freely arrest makes the chief and the police organization especially fearsome to the black community, which, lacking the education to know its rights, perceives correctly that its members are powerless in the hands of the police. Mr. and Mrs. Mars testified that the perception of the Miller control of the City remains current in the black community and that while they always voted in state and national elections, they rarely vote in most municipal elections because of the perceived futility of their vote.

government's awareness of and attention to those interests.[13]

Both Congress and the Courts have recognized the effect ower socio-economic status has on minority participation in the political process. The Senate Report states:

> "The courts have recognized that disproportionate educational[,] employment, income leverl[,] and living conditions arising from past discrimination tend to depress minority political participation . . . . Where these conditions are shown, and where the level of black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation."

1982 Senate Report at 29 n. 114, U.S.Code Cong. & Adm.News 1982, p. 207. *Se also, Major v. Treen*, 574 F.Supp. 325, 351 (E.D. La. 1983).

In sum, the depressed levels of income, education and employment are a consequence of severe historical disadvantage. Depressed levels of participation in voting and candidacy are inextricably involved in the perception of futility and impotence such a history engenders. These historical disadvantages continue through the present day and undoubtedly hinder the ability of the black community to participate effectively in the political process within the City of Gretna.

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13 "Section 2 claimants are not required to demonstrate by direct evidence a causal nexus between their relatively depressed socio-economic status and a lessening of their opportunity to participate effectively in the political process." *Gingles v. Edmisten*, 590 F.Supp. 345, 363 (E.D.N.C.1984), n.23; S.Rep. No. 417, 97th Cong., 2d *Sess.* 193 (1982), U.S.Code Cong. & Adm.News 1982 p. 177.

The Extent of Election of Black Citizens to Public Office

It appears from the record that no black person has ever been elected to municipal office in Gretna. Indeed, in the entire history of Gretna, only two black persons have run for municipal office (Edwin Romain in 1973 and Leo Jones in 1977 and 1979 for Alderman). This is in distinct contrast to the white community which, despite the overwhelming success rate of the Miller-White factions,[14] turns out a large group of candidates for municipal elections. In 1973, thirteen which non-in-cumbent candidates ran for Alderman. In 1977, six white non-incumbent candidates ran for aldermanic office. In 1979, six white non-incumbent candidates ran for one seat against a seventh with strong Miller-White identification indicia.

[2,3] Where members of the minority group have not been elected to public office, it is of course evidence of vote dilution. *U.S. v. Marengo County Comm'n.*, 731 F.2d 1546, 1571 (5th Cir.1984). Section 2(b) explicitly permits the court to consider "[t]he extent to which members of a protected class have been elected," but in the next breath warns that the statute does not establish a right to proportional representation, 42 U.S.C.A § 1973(b) (West Supp. 1983). Less than proportional representation does not automatically violate Section 2. However, the election of even one or a small number of minority elected officials will not compel a finding of no dilution. *Id.* at 1572.[15] As Judge Gewin cautioned in *Zimmer v. McKeithen*, 485

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14 *See*, p. 1122, *infra*.

15 *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir.1973) specifically notes:

"Such success might, on occasion, be attributable to the work of politicians, who, apprehending that the support of a black candidate would be politically expedient, campaign to insure his election. Or such success migh be attributable to political support motivated by different

F.2d 1297, 1307 (5th Cir. 1973):

> "Were we to hold that a minority candidate's success at the polls is conclusive proof of a minority group's access to the political process, we would merely be inviting attempts to circumvent the Constitution. This we choose not to do. Instead, we shall continue to require an independent consideration of the record."

So too, this case requires the Court to make an independent consideration of the record.

As noted earlier, no black person has ever been elected to the Board of Aldermen of Gretna since its incorporation in 1913. Nevertheless, defendants argue black citizens have elected dandidates of their choice to the Board of Alderman with regularity because Gretna's white officials have always received a significant portion of the black vote and the support of Gretna's black political organizations.[16] That argument is spurious at best—and at the very least calls to note an anecedote once attributed to Henry Ford. The author notes:

> "At first it was possible to buy Model T Touring cars that were painted red and roadsters that were painted gray, but in mid-1909 under pressure to build as many cars as possible, the color for all Model T's became dark green with black trim and red stripping. In 1912, with

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(Footnote 15 continued)
considerations—namely that election of a black candidate will thwart successful challenges to electoral schemes on dilution grounds." *Id.* at 1307. *Se also, National Association for the Advancement of Colored People v. Gadsden County School Board*, 11 Cir. 1982, 691 F.2d 978, 983.

> demand for the car still rising and the urgent need for even greater standardization and simplification, Ford made this famous statement, 'Any customer can have a car painted any color he wants so long as it is black.' Thereafter, only black cars poured out of the Highland Park factory."

Barry, James P. *Henry Ford and Mass Production*, 55 (Franklin Watts, Inc., New York, 1973).

Implicit also within defendants' assertion that black voters in Gretna have elected candidates of their choice is the suggestion that at least one of the two black candidacise—that of Leo Jones—was simply token because he was not endorsed by two local black political organizations—the Westside Citizens' Committee and the Black Caucus, in 1977 or 1979. A review of the record and the campaign for these periods does not support such a finding.

In the 1977 aldermanic election, Jones completed with 11 white candidates. All the candidates including Jones, were registered Democrate.[17] His overall vote of 1,159 left him in ninth place in the balloting, 1,943 votes behind the candidate who was ultimately elected. In the 1979 special election, held for a single seat, Jones competed against seven white candidates. His overall vote of 756 (13.3% of the total vote) left him a distant fourth in the election. The two leading condidates who were forced into a runoff received 1,544 and 1,430 votes, 788 and 674 more votes, respectfully, than Jones.

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[17] Thus, party identification was not a factor in the 1977 election.

The Court finds that Jones was a viable and legitimate condidate with considerable name recognition in both the 1977 and 1979 elections. His campaign expenditures in those elections were roughly equivalent to the other candidates, including the winners. For example, Jones testified that he spent $1,500 and $2,500 in 1977 and 1979, respectfully. All candidates in both electionns with the exception of Kate Ward[18] and Salvadore Marchese filed affidavits with the State attesting that they had spent under $5,000 in campaign expenditures. The winner of the 1979 election, Salvadore Marchese, filed an affidavit evidencing expenses of $2,633 for the primary election.

The record also shows that Jones was an active campaigner as well.[19] In both campaigns, he printed thousands of cards and yard signs which he distributed as he campaigned.[20] In the 1977 campaign, Jones offered himself to the voters as a leader with experience in government (former deputy sheriff with the Jefferson Parish Sheriff's Department) and civic groups (executive director of the Park Village Civic Organization).[21] His platform included advocating, among other things, Civil Service for all city employees, advertising for bids on all city contracts in the official journal, providing a system of large and small fully equipped playgrounds using a Bloc Grant and other federal funds, and the revitalization of the Central

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[18] Ms. Ward filed an affidavit listing campaign expenditures of $12,184.00 for 1977.

[19] Jones was a frequent contributor to the local newspaper, the West Bank Guide. By the time of the October 27, 1979 primary election, Jones had published seven letters to the Editor on isues relevant to the electors.

[20] The cards contained Jones' picture, his name and his ballot number as well as statements about his political activity.

[21] See. Plaintiff's Exhibit P-13.

Business District with the cooperation of business and industry.

Jones testified that he campaigned vigorously in every precinct in both elections, going from house to house and covering at least 80 percent of the houses with registered voters which he estimate to be about 2,400 households. He testified that he took from work for the race and campaigned heavily on evenings and weekends. For the 1977 election, he campaigned for two months. Indeed, for the 1979 aldermanic race, Jones was the first candidate to announce his candidacy in the local newspaper. He testified that he campaigned for three months actively in both predominantly black and predominantly white neighborhoods of Gretna.[22]

Thus, the failure of one black candidate to receive the endorsement of a particular black political organization, while it may have demonstrated that some white candidates received black support, certainly does not suggest that his candidacy was a token one. The endorsement by these organizations might, on occasion, be attributable to political support motivated by different considerations—namely, that there is little optimism that a black could win an election under Gretna's current aldermanic election scheme. The fact remains that despite the strong candidates of two qualified blacks on three separate occasions, no black has ever won an aldermanic election. This evidence can be interpreted only as strong evidence of dilution.

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[22] The other black candidate for Alderman, Edwin Romain, who ran in 1973, also campaigned strongly for the 1973 aldermanic election. He was endorsed by the West Side Citizens Committee. In the primary election, Romain finished sixth out of seventeen candidates, high enough to qualify him for the runoff election. however, in the runoff, he finished last in the race.

Access to the Slating Process

"In jurisdictions where there is an influential official or unofficial slating organization, the ability of minorities to participate in that slating organization and to recieve its endorsement may be of paramount importance." *U.S. v. Marengo County Commission*, 731 F.2d at 1569. Politics in the City of Gretna is characterized by a constant reference to an informal group of elected officials known as the "Miller-White Ticket." The Millers, father and son have been consecutively Chief of Police for a period of 60 years without interruption. Beauregard Miller, Sr. became Chief in 1925 and served for 50 years until his death in 1976. His son, Beauregard, Jr., was appointed at his death and elected Chief in 1977. William White has been mayor of Gretna since 1951, a total of 34 years.

There exists some controversy among the parties as to whether in fact the Miller-White faction is in fact a slating group. Defendants object to plaintiffs' characterization of the "Miller-White Ticket"as a slating group. Rather, they argue, "it is an endorsement group, since it does not recruit candidates for office and/or run endorsed candidates as a slate."[23] Moreover, defendants urge, the "Miller-White Ticket" is not affiliated with any political organization; nor does it consider itself as representative of any formal group. However, whether in fact the Miller-White Ticket is nonpartisan is of little importance in determining whether it is a slating group. Indeed, a nonpartisan slating group has been defined as "an organization whose purpose is to recruit candidates, nominate them, and campaign for their election to office in

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[23] *See*, Defendant's Post Trial Memorandum, p. 29. Testimony of Dr. Wilgen.

a nonpartisan election system."[24] However, what is important, and quite evident from the record, is the fact that although no formal recruting process exists, there does exist a more informal slating process which generally ensures a white candidate for every office. Plaintiff's have presented, very cogently and convincingly, evidence that the black community has been effectively excluded from the informal slating process that is carried on in Gretna. Aldermen Uzee and Edwin Romain testified that in 1973 when there were two aldermanic seats open, a meeting was held in a local restaurant, to which all non-incumbent candidates were invited except, Mr. Romain, the black candidate. Chief Miller, Sr. chaired the meeting; he offered the endorsement of the Miller-White group to all candidates who would endorse the rest of the Miller-White Ticket.[25] A few of the white candidates accepted the offer and were

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[24] *See, Minority Vote Dilution* at pg. 119. Black Law Dictionary defines a slate as simply "[a] list of candidates for public office or for positions on board of directors." *Id.* at pg. 1245. In *Minoritty Vote Dilution* the authors caution against misconstruing the term "nonpartisan" when discussing the nature of a particular slating group. They note:

> "it should be said at the outset that the term nonpartisan in this context is misleading. Students of nonpartisanship have long been aware of its ambigous meaning. On the one hand, it refers to a system in which candidates party afiliation is absent from the ballot. 'Ballot nonpartisanship' in this sense must be distinguished from systems of participatory nonpartisanship' in which political parties are not involved in campaigns. Obviously ballot nonpartisanship is entirely compatible with participatory partisanship as when the Democratic and Republican county committees either formally or informally work in behalf of a local candidate whose party affiliation is not on the ballot. In other words, it is possible to have 'party politics' in a system of ballot nonpartisanship".

Id. at 120.

[25] The ticket included, among others, Miller for Chief and White for Mayor.

invited to a second meeting the next day to be interviewed by Mayor White. Two were chosen to run with the Miller-White Ticket: Mr. Uzee and Mr. Bush. These two were elected and serve to this day on the Board of Aldermen.

Salvadore Marchese, winner of a 1979 special aldermanic election, testified that the first time he ran the Miler-White Ticket endorsed no one. On cross examination, however, when confronted with his own campaign advertisement endorsing Miller for Chief of Police, he admitted that his campaign did receive some support from the Miller-White faction.

As a factual matter, blacks in Gretna are completely excluded from representation on the Miller-White Ticket. It is extremely difficult to win an aldermanic election without the Miller-White endorsement.[26] Indeed, defendants have admitted that each time the Miller-White faction has endorsed a candidate for the Board of Aldermen, that candidate has won. The black candidate, Edward Romain, testified he approached several of the incumbent aldermen seeking their support in 1973. He as told that the person to see was Chief Miller. When he spoke to Chief Miller he was informed that he could not be on the slate, that he was not needed to get the black vote. Thus, Miller refused to endorse Romain despite the fact that Romain had considerable suppport in the black community, including the endorsement of the West Side Citizens Committee.

While is is true that some members of the Miller-White Ticket do receive support from the black community, the opposite is not true. That is to say, there is no

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[26] There are some white candidates who have in more recent years won election without the Miller-White endorsement; however, not without some difficulty and costly efforts.

evidence to show that blacks have any choice in determining what issues or candidates should or should not be endorsed by the Miller-White Ticket. If participation is to be labeled "effective" then it certainly must be a matter of right, and not a function of grace. *See. Graves v. Barnes,* 343 F.Supp. 704, 726, *affd. in White v. Register,* 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.23d 314 (1973). Evidence presented at trial clearly show that the black community in Gretna participates in the slating process in only a minimal and indirect measure.

Enhancing Factors

A vote dilution case "is enhanced by a showing of the existence of large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistricts". *Zimmer,* 485 F.2d at 1305.

The Court finds that the entire voting population of the City of Gretna constitutes an unusually large election district for the purposes of electing the members of the Board of Aldermen. Gretna is the largest city by population in Louisiana that elects its governing body at large. With a population of 20,615 persons, the city is 4,501 larger in population than the next largest city in Louisiana that elects its governing body at-large (Morgan City at 16,114 persons). In Louisiana, over 90 percent of the municipalities with governing authorities elected at large have populations under 4,123.

Gretna's elections in general are governed by the Louisiana Election Code, LSA-R.S. 18:1 *et seq.* Gretna has a majority vote requirement for election to office. The number of votes required to elect candidates in Gretna is determined by LSA-R.S. 18:511, which provides in rele-

vant part:

> A. *Majority Vote.* A candidate who receives a majority of the votes cast for an office in a primary election is elected. If there are two or more offices of the same character to be filled, the number of votes necessary to constitute a majority shall be greater than the result obtained by dividing the total votes cast for all of the candidates by the number of offices to be filled and dividing the result so obtained by two. If more candidates receive a majority than there are offices to be filled, those of such candidates receiving the highest total of votes shall be elected, to the number required to fill all of the offices.

Plaintiffs' expert, Dr. Engstrom, has correctly explained that the statute creates a "sliding minimum vote requirement," that is a type of majority vote requirement. Dr. Engstrom has properly termed it "sliding" because it is possible, using the required formula, for a candidate to have obtained more than fifty percent of the votes and still not have met the minimum vote required to be elected. It is also possible for a candidate to obtain somewhat less than a majority and still meet the minimum vote requirement if a great many voters vote for fewer than the available seats.[27]

The general effect of Gretna's majority vote requirement, because it requires more than a simple plurality, is to make it less likely that the candidates of any identifiable voting minority will ever win elections. This generally adverse effect on any cohesive voting minority is enhanced

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[27] There are no prohibitions against single-shot voting in Gretan. LSA-R.S. 18:522. That is, there is no requirement that voters vote for a full slate of candidates on the ballot.

if racial polarization in voting patterns also exists. Accordingly, the Court finds that the majority vote requirements act as a continuing practical impediment to the opportunity of blacks in Gretna to elect candidates of their choice.

Racial Polarization in Voting

Statistical evidence presented by duly qualified expert witnesses for plaintiffs and supplemented to some degree by direct testimony of law witnesses, establishes that racially polarized voting in the City of Gretna, Dr. Richard Engstrom and Professor Michael McDonald,[28] duly qualified expert witnesses for plaintiffs, collected data

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[28] Sometime after the hearing of this case, Michael McDonald notified the Court through plaintiffs' counsel, that though his testimony given in court may have led the Court to believe he had received the Degree of Doctor of Philosophy (Ph.D.), in fact he had not received such a degree. In a prepared affidavit, McDonald noted that while he had passed all requirements for the Ph.D., including a successful defense of his dissertation, he had not completed the formal submission of the final form of dissertation for administrative purposes. Upon learing of this, plaintiffs have moved the Court to requalify Michael McDonald as an expert. Defendants do not object to Professor McDonald's requalification.

Rule 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Although Professor McDonald at the time of trial did not hold a Ph.D., Federal Rules of Evidence 702 does not require the possession of a Ph.D, to qualify an expert. The language of the rule is such that experience, training, and education are items the Court may consider in its determination of whether a witness qualifies as an expert. McDonald's affidavit attests to the fact that he has spent eight and one-half years continued.

from every election in which Gretna voters had the opportunity to vote for a black person focusing attention mainly on the 1977 and 1979 aldermanic elections. Based upon two complementary methods of analysis of the collected data—correlation and regression analysis and homogenous precinct analysis[29]—combined with a related descriptive analysis to test for a mistaken inference, Drs. McDonald

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(Footnote 28 continued)
since 1977 working as a professional political scientist. He has worked exclusively as a university level teacher and researcher in the Political Science Departments at the University of New Orleans (U.N.O.) and currently at the State University of New York-Binghamton. His teaching responsibilities include the areas of legislative politics and data analysis for politics and policy. Along with teaching, he has also conducted research concerning representatational politics and data analysis. He has also published three scholarly articles, co-authored with Dr. Engstrom, concerning black representation in the electoral structure which have received strong praise and acceptance in the political science field.

Other relevant aspects of his work include the data analytic task performed for Section 2 litigation in jurisdictions other than Gretna. McDonald attests and the Court accepts that he has been involved in the data base preparation, computer program writing, and data analysis for Section 2 litigation in: (1) Norfolk, Virginia—heard and decided; (2) Sarasota, Florida—heard and decided; (3)Blytheville, Arkansas—settled out of court; (4) Yonkers, New York—settled out of court; (5) New York City, New York—heard and decided; and (6) Washington County, Mississippi.

In sum, the Court finds that Professor McDonald's professional career suggested an ability to perform capably in assisting the Court's interpretation of evidentiary questions concerning the patterns of racially polarized voting in Gretna. Accordingly, a review of McDonald's affidavit as well as the attached articles show that he is overwhelmingly quanified by knowledge, skill, and training to be an expert in this area.

[29] Dr. Engstrom and Professor McDonald have appropriately noted:

> "Two analytic procedures for estimationg the magnitude of group differences have been commonly relied upon by the expert witnesses in vote dilution cases. One approach is simply to examine levels of participation and voting behavior

and Engstrom summarized, and the Court concludes for reasons which follow, that within each of the elections analyzed, racial polarization existed in a significant degree.

Quantitative Evidence

Although election returns are available as far back as 1960, statistics on registration and turnout by race and precinct are only available after 1975 for Gretna. Therefore, of the four elections in which blacks ran for alderman, only two were capable of quantitative analysis: the elections of 1977 and 1979.

Voters in Gretna vote in 13 precincts, the boundaries of which are set by parish ordinance. Three of the 13 precincts in the 1977 and 1979 elections were homogeneous white precincts with populations of ten or fewer black voters.[30] Four of the precincts have less than ten percent registered black voters. They are Precincts 4 and 4A of Ward 1, Precinct 3 of Ward 2, and Precinct 1 of Ward 3. Two of the precincts (Precincts 3 and 3A in Ward 1) have

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(Footnote 29 continued)
within "homogeneous" precincts of a particular political jurisdiction. Homogeneous precincts are those in which all or almost all of the potential voters are members of the particular racial or language minority group. The other approach is to utilize a more general statistical procedure known as correlation and regression analysis. The major advantage of this approach is that information about voting behavior in all of the precincts in a political jurisdiction, or some specific geographical area, is incorporated into the analysis."

*See*Note, *Quantitative Evidence in Vote Dilution Litigation: Political Participation and Polarized Voting,* 17 Urban Lawyer, 369, 371 (1985)

[30] Precincts are considered to be homogeneous if over 90 percent of the population, voting age population, or registered voters (depending on which data are available) residing in the precinct are members of the minority group; or conversely, less than 10 percent are members of the minority group.

had a majority black polulation at least since 1979.

Analysis of the 1977 and 1979 election returns precinct by precinct reveals that while black voters are estimated to have voted for the black candidate at a rate of 60 to 67 percent, white voters were estimated to have voted for black candidates at a rate which ranged from a low of .9 percent (less than one percent) to a high of 12 percent.

Since there were so few aldermanic elections in which major black candidates ran, plaintiffs' experts analyzed the other five elections in which Gretna voters had the opportunity to vote for a black candidate.[31] In the four elections capable of quantitative analysis, the following percentages of black and white voters voted for the inidcated black candidate:

Election	White (%)	Black(%)
1984 - Jackson		
* Unweighted	1.6	95.5
* Weighted	1.7	95.3
1979 - Jeffers		
Unweighted	7.5	70.1
Weighted	7.9	70.1
1979 - Jones		
Unweighted	1.0	60.1
Weighted	0.9	65.7
1977 - Jones		
Unweighted	11.2	65.1
Weighted	12.0	67.2

* The term "unweighted" as used here means that each percinct in Louisiana was treated as an equal unit in determining these values, regardless of the actual number of votes cast in those precincts. The term "weighted" is used to take into account differences in the number of votes across precincts.

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[31] In three of these elections two black candidates, Larry Napoleon

In general, almost 80% of white voters did not vote for any black candidates in these five elections.

Plaintiff's experts testified at some length concerning their methods of analysis—Homogeneous Precinct Analysis and Correlation and Regression Analysis. Since expert witnesses rarely rely solely on homogeneous precinct analyses to estimate the differences in voter participation and preferences, and because estimates of group differences in voting behavior can be derived from this procedure without homogeneous precincts being present, the Court will discuss plaintiffs use of Correlation and Regression Analysis first. See generally, note, *Multiple Regression in Legal Proceedings,* 80 Col.L.Rev. 702 (1980).

Correlation and Regression Analysis

Correlation and regression analsis is used to determine the degree of relationship between two variables, such as the racial composition of the precincts in a city or district and the electoral support provided a particular candidate or group of candidates within those precincts. The independent variable in the analysis is a summary measure of the race of the voters in each precinct usually the percentage of blacks among the total population, voting age

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(Footnote 31 continued)
Cooper and Sylvester Brown, drew so little voter support from blacks or whites that they were not included in the analysis. (Cooper, who ran twice, once for Lieutenant Governor and once for Senator, is apparently a fringe candidate, and Sylvester Brown withdrew before the election was held.) The other two elections were the 1984 presidential primary in which Jessee Jackson ran and a 1979 race by Ben Jeffers for Secretary of State of Louisiana.

population, or registered voters). the dependent variable is the percentage of voters in each precinct casting ballots for the specific candidate or group of candidates. Correlation and regression analysis provides statistical coefficients that summarize the consistency and strength of the relationship between the two variables.[32]

Plaintiffs' experts demonstrated that they were keenly aware of criticism that has been leveled at statistical analyses of racial polarization, coming mainly from Judge Higgenbotham in *Jones v. City of Lubbock, Texas,* (special concurrence), 730 F.2d 233 (5th Cir.1984).

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[32] The correlation coefficient, which is reported as "r," is a measure of how consistently the scores for a dependent variable (the percentage of voters supporting the black candidate) vary with the independent variable (the black proportion of the voting age population. Both plaintiffs' experts testified that if the percentage of voters supporting a candidate or a group of candidates in the various percincts tends to increase as the black percentage of the voting age population in these precincts increases, then there is a positive relationship between the two variables. Thus, if the percentage of voters supporting a candidate or group of candidates tends to decrease as the black percentage of the voting age population increases, then the relationship is negative. The more consistent the tendency, the greater the magnitude of the correlation coefficient. the value of "r" can range from ' 1.0 (a perfectly consistent positive relationship) through 0.0 (no relationship) to - 1.0 a perfectly consistent negative relationship).

A second coefficient, the one that illuminates the degree to which voting patterns are racially differentiated, is the unstandardized regression coefficient, commonly reported as "b." This coefficient provides an estimate of how strongly two variables are related; that is, to what extent the scores for a dependent variable can be expected to change in response to changes in the scores for an independent variable. Whereas the correlation coefficient summarizes how consistently the electoral support for a candidate or group of candidates varies with the race of the voters in the precincts, the regression coefficient estimates how much that support varies with the racial composition of the precinct electorates.

They do utilize the "r" factor, which is the statistic complained of by Judge Higginbotham, to provide a measure of how consistently the percentage of votes received by the black candidate varies with the percentage of voters who are black, but they also utilized a "b" factor which illuminates the degree to which voting patterns are racially polarized to *how much* the support for the black candidate varies with the racial composition of the electorate. Thus an "r" reading which approaches 1 shows that the correlation between an increase in the number of black voters and votes for the black candidate is very consistent. the "b" reading shows how much with every one percent increase in the percentage of black voters, the vote for the black candidate increases. The experts explained, they then find the standard error of the "b" to determine the degree of confidence. If the standard error of the "b" is at least twice the "b," the "b" is considered to be a reliable estimate. thus, if the "white voters split their vote 50-50," the "b" figure would correct the impression of high correlation which would show up in the "r" if "the minority voters voted as a bloc." *See Jones,* 730 F.2d at 235. the experts also derive their estimates of percentage of black and white voters voting for the black candidate from the same regression analysis. (See Plaintiffs' Exhibit 64 attached.)

Using charts (Plaintiffs' Exhibits 59 and 63), plaintiffs' experts have very carefully demonstrated to the Court how correlation and regression and analysis is applied to the 1977 and 1979 aldermanic elections, respectively. Within plaintiffs' Exhibits 59 and 63), plaintiffs' experts have very carefully demonstrated to the Court how correlation and regression analysis is applied to the 1977 and 1979 aldermanic elections, respectively. Within plaintiffs' Exhibits 59 and 63, the independent variable reflected on the horizontal axis is the percentage of the voting age population (reflected as "Adjusted Black % of Registered

Voters for 1977), which is black in each of Gretna's thirteen precincts. The dependent variable, reflected on the vertical axis, is the the percentage of voters in each of the precincts who voted for Jones. Every precinct in the City (depicted by triangles) is located within the figure (called a scatterplot) according to its scores on these two variables. As recorded on the scatterplot itself, the value of the correlation coefficient for Jones' vote in 1977 and 1979 is .926 and .963, respectively; that is, an almost perfectly consistent pattern existed in which the percentage of voters supporting Jones increased as the black percentage of the voting population increased.

Whereas the correlation coefficient summarizes how consistently the electoral support for a candidate or group of candidates varies with the race of the voters in the precincts, the regression coefficient"b" estimates how much that support varies with the racial composition of the precinct electorates. In plaintiffs' Exhibits 59 and 63 (see attached), the value of "b" is the slope of the line that has been drawn through the points in the scatter plot. Plaintiffs' experts explained that this regression line is the straight line that fits the points (or triangles) the best, meaning no other straight line could be drawn such that the combined distances or deviations between each of the points and the line would be less than they are for these regression lines. The slope of the regression line provides an estimate of the strength of the relationship between the two variables; the greater the slope, the stronger the relationship.

The "b" for the relationship depicted in the 1977 election is .539. Based on this regression line, it is estimated that every increase of 1.0 percent in the black portion of the voting population across precincts tended to result in a .539 increase in the percentage of voters support-

ing Jones. In other words, if the black proportion of the voting population in one precinct was 50 percertage points higher than in a second precinct, the percentage of voters supporting Jones in that precinct would be expected to be about 27 percentage points higher (50 X .539) than in the second precinct. The correlation and regression coefficients for this example demonstrate that the electoral support for Jones across precincts in Gretna in 1977 was strongly and consistently related to the racial composition of those precincts.[33]

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[33] The same arithmetic can be done for the 1979 election (50 X .590 = 29.5) to show that the black proportion of the voting population was 50% points higher than in a second precinct, the % of voters supporting Jones in that precinct would be expected to be about 29.5 percentage points higher than in the second precinct.

The regression line in the 1977 and 1979 aldermanic charts not only provides an estimate of the strength of the relationship between the variables, it also can be used to provide estimates of the actual percentages of black and non-black voters supporting any particular candidate or group of candidates. These estimates are based on "intercepts," the points at which the line crosses the left and the right vertical axes of the scatterplot. The left intercept provides an estimate of the percentage of voters supporting a candidate in a precinct in which no black people would have voted, while the right intercept provides an estimate for a precinct in which only blacks would have voted. Intercepts allow one to compare (as was done through homogeneous precinct analysis) the percentage of both minority group voters and nonmimority group voters favoring a particular candidate. The values of the intercepts reported in the 1977 election suggests that Jones received the votes of only 0.1 percent of the voters in Gretna who were not black, while he was supported by 65.1 percent of those who were black.

The values of the correlation coefficient, regression coefficient, and intercepts reported in the 1977 chart are based on "unweighted" correlation and regression, meaning each precinct in Gretna was treated as an equal unit in determining these values, regardless of the actual number of votes cast in these precincts. This type of analysis can also be "weighted" to take into account differences in the number of voters across precincts, so that the influence each precinct has on the values

Homogeneous Precinct Analysis

Dr. Engstrom and Professor McDonald then proceeded to subject their analysis to the second step in their method—homogeneous precinct analysis. The conclusion that Mr. Jones received only a small proportion of the votes cast by whites in the 1979 elections is corroborated by an investigation of the votes cast in the homogeneous white precincts. In 1979, no black person voted in Precinct 4A of Ward 1, only one black person voted in Precinct 3 of Ward 2, and only two blacks voted in Precinct 1 of Ward 3. Of the 1,458 votes cast for aldermanic candidates across these three precincts, the black candidate received 22 or 1.5 percent. In each of the precincts that were homogeneous and white in 1977 (Precincts 4 and 4A in Ward and Precinct 1 in Ward 3), a total of 13 blacks were registered to vote. Jones finished last among the twelve candidates.

Although there are no homogeneously black precincts in Gretna, a separate analysis of the vote in the two majority black precincts (Precincts 3 and 3A in Ward 1) supports the conclusion that in 1979 the black candidate received over 60 percent of the votes cast by blacks. In these two precincts, 759 people turned out to vote in 1979, 482 of whom (63.5 percent) were black. Six hundred forty-two voted in the aldermanic contest. Assuming that each racial group "rolled off" at an equal rate, and that the white crossover vote for the black candidate in these two precincts was the same as the city wide estimate (1.0 percent), then Jones is estimated to have received 2 of the 238 votes cast by whites in these precincts and 273 of the 414 votes cast by blacks, or 65.9 present of the black vote.

(Footnote 33 continued)
of the summary coefficients varies by the size of the vote cast within that precinct. See, Plaintiffs' Exhibit # 64 for results of regression analysis in the 1977 and 1979 aldermanic elections.

Additional Proof

Generally, where the results of the regression analysis are confirmed by a separate investigation of the homogeneous precincts, that is where the "b" indicates the strength of the increase, the "r" confirms the consistency of the increase, and the standard error of the "b" is at least twice the "b," no further investigation is necessary. No data have appeared to suggest that the inferences made are incorrect. Nonetheless, Drs. Engstrom and McDonald performed a further analysis to determine whether a mistake could have been made in their regression analysis by perhaps infering incorrectly from aggregate data to describe individual behavior (such as particular voting decisions). Such incorrect inferences are said to suffer from the "ecological fallacy," another subject cautioned againsst by Judge Higginbotham. However, plaintiffs' experts also considered a series of Census Bureau charts and tapes on income and education data relating to the three homogeneous white precincts, 4A in Ward 1, 3 in Ward 2, and 1 in Ward 3.[34] Precinct 4A in Ward 1 turned out to be coterminous with a block group for which extensive data was available. Plaintiffs' experts were able to conclude that although there was a wide range of income levels in Precinct 4A, it clearly contained the most affluent sections of the city. Precinct 3, Ward 2 provided data which in Dr. McDonald's esstimate suggessted a middle level income area. That is, not very many poor families show up in the income range data, but there are no families with incomes above the $50,000 bracket. For Precinct 1, Ward 3, Dr.

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[34] Data from the Census Bureau is frequently only availabale in block level groups which may or may not be the same geographical shape as the precinct would appear on a map.

McDonald studied housing and rental data as well as family income. He concluded that this last precinct was a distinctly low income area. Thus, he concluded that the homogeneous white precincts could be classified as poor, middle class and affluent. Despite their differecnce, the white population of these three precincts had one thing in common. Virtually no one voted for the black candidate. From this, the experts concluded that there was no reason to assume that whites in the mixed precincts had behaved any differently from whites in the homogeneous precincts.

In conclusion, plaintiffs' experts analyzed voting to determine if it was popularized by using a bi-variant regression analysis. By using computers, they studied percentages of black voters who voted for the black candidate and precinct size. Their analysis of various kinds of income was descriptive, not quantitative. It was their testimony that racial polarization is a concept in political science which describes a situation where, for whatever reason, blacks are voting one way and whites are voting another. To determine that such a pattern was occurring is properly the task of bi-variant regression analysis.

Defendants, in an effort to rebut plainitffs' claim that voting in the City of Gretna was racially polarized, relied heavily, if not exclusively, on the testimony of Dr. John Wildgen, a political science professor at the University of New Orleans, who was qualified by this Court as an expert in computer applications, political behavior and comparative politics. Dr. Wildgen concluded that Gretna's "at-large" system of electing aldermen did not result in a dilution of black voting strength. He concluded the Gretna's elections are not characterized by racial polarization.

Notwithstanding the fact that no black person has ever been elected to alderman, Dr. Wildgen contends that

the elections in which blacks of Aldermen were not characterized by racial polarization. The evidence clearly belies such a contention.

In earlier studies on voting behavior in Orleans Parish, "The City of New Orleans' 1976 Elections." and "A Political Problem of Public Education in New Orleans," Dr. Wildgen, employing the statistical tools of bivariant regression analysis, concluded that racial polarization existed amongst the voters in New Orleans.

Contrary to previous publications and testimony, Dr. Wildgen now contends that regression analysis is imappropriate for measuring racial polarization. According to Dr. Wildgen, one must conduct a multivariant analysis taking into consideration not only the registration by race in each precinct and the precinct elections returns, but also, religion, income, media coverage, etc. He also encourages the use of survey data. While multi-variant analysis and survey data may prove helpful in determing whether racial polarization exists, they too are not dispositive on the issue and in no way negate the use of bi-variant regression analysis to determine whether in fact polarization exists.

Race-conscious politics is, as it has been since blacks were allowed to vote, one of the main issues in Gretna politics. Perhaps most teling on the issue of racial polarization is the evidence put forth concerning the campaign of Edwin Romain for the 1973 aldermanic election. In determining whether racial polarization exists in an election scheme, Judge Higginbotham has correctly stated:

> The inquiry is whether race or ethnicity was such a determinant of voting preference in the rejection of black or brown candidates by a white majority that the at-large district, with its com-

ponents, denied minority voters effective voting opportunity.

Jones v. Lubbock, 730 F2d at 234 (special concurrence). Judge Higginbotham's inquiry takes on speicial significance when studied in the context of the 1973 aldermanic race. In that election, Romain, a light-skinned black, ran for alderman against 13 non-incumbent white candidates. During the race, a meeting of the candidates was called by Chief Miller to form the Miller-White slate. All 13 white candidates were invited; Romain was not. Romain testified he approached several of the incumbent aldermen seeking their support. He was told that the person to see was Chief Miller. When he spoke to Chief Miller, he was informed that he could not be on the slate, that he was not needed to get the black vote.

Later, Romain testified that he directed considerable campaign effort toward the white residents of Gretna. He testified that he was not known in the white community; that white voters did not realize he was black. Moreover, to enhance his chance of getting white votes, Romain went door to door with his two light-skinned daughters who, he testified, "were the most adapted to white ways." He chose not to campaign with his darker complected sons. He was well received in the white community. In the primary election, Mr. Romain finished sixth out of seventeen candidates, enough to qualify him for the runoff election.

The ploy used by Romain to gain valuable white support for his campaign came to an abrupt end after the primary. A newspaper article was published between the primary and the runoff stating that if elected. Romain would be the first black person to serve on the Board of Aldermen in Gretna. The evidence suggests that this revelation had severe consequences for Romain since his

race had not been previously mentioned by the press. The apparent results of the jolting news was that Romain finished first and second in the majority black precincts and last in every other precinct in the City, to finish last in the race.[35]

In *Rogers v. Lodge,* 458 U.S. 613, 102 S.Ct. 3272, 3279, 73 L.Ed.2d 1012 (1982), Justice White, speaking for the Court, observed that "[v]oting along racial lines allows those elected to ignore black interests without fear of political consequences, and without bloc voting the minority candidates would not lose elections solely because of their race." There is but one sad and inevitable conclusion; Romain lost for the most part because of his race.

Ultimate Findings of Fact

The totality of relevant circumstances found by the Court—lingering effects of years of official discrimination against black citizens in matters touching registration and voting, substantial polarization in voting, a relatively

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[35] Because of the lack of registration and turnout data prior to 1976, Dr. Engstrom was unable to subject Romain's race to a quantitative analysis. He did look at the results closely and provided a descriptve analysis. In the 1973 election Romain competed with 16 other candidates in the primary election. Two of the five seats in the first primary election, and six candidates, including Romain, competed in a second runoff primary for the remaining three seats.

Mr. Romain's best performance in the first primary was his fourth place finish among the candidates in precincts 3 and 3A in Ward 1, the only two precincts in Gretna in which blacks constitute a majority of the registered voters (at least since 1976). However, when the contest was reduced to six candidates seeking the three remaining positions on the Board, Mr. Romain finished first in precinct 3A of Ward 1, second in precinct 3 of Ward 1, and last in every other precinct in the City. He was therefore last overall. Engstrom concluded that the returns showed a pattern of racially polarized voting in the 1973 election as well. The foregoing analysis confirms Mr. Romain's testimony regarding his election.

depressed socio-economic status resulting in significant degree from a century of both *de jure* and *de facto* segregation, and the continuing effect of a majority vote requirement through use of an "unusually large" election district—results in the submergence of black registered voters in the City of Gretna as a voting minority with members of the electorate to participate in the political process, thereby depriving the black voters of their lawful right to elect representatives of their choice.

CONCLUSIONS OF LAW

This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 1973j(f) and 28 U.S.C. §§ 1331, 1343, 1344, 2201 and 2202.

Plaintiffs seek relief under both the Voting Rights Act of 1965, 42 U.S.C. 1973, *et seq.* as amended, and also under the Fourteenth and Fifteenth Amendments of the United States Constitution.

Although plaintiffs allege both a statutory violation and a constitutional claim, the Section 2 violation must be adjudicated first. *McMillian v. Escambia County, Fla.*, 638 F.2d 1239 (5th Cir. 1981), *vacated*, 466 U.S. 48, 104 S.Ct. at 1577 (1984), *aff'd*, 748 F.2d 1037 (5th Cir. Dec. 19, 1984); *Lee County Branch of NAACP v. City of Opelika*, 748 F.2d 1473, 1478 (11th Cir. 1984); *Major v. Treen*, 574 F.Supp. 325 (E.D.La. 1983). A finding of a Section 2 violation would then obviate the necessity to address plaintiffs' constitutional claims. *Lee County*, 748 F.2d at 1478.

Section 2 of the Voting Rights Act of 1965, as amended provides:

a) No voting qualification or prerequisite to

> voting, standard, practice or procedure shall be imposed or applied by any state or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color. . . .

42 U.S.C. 1973.

The "at-large" system of electing aldermen in the City of Gretna is maintained by defendants under color of state law of the State of Louisiana.

> The Voting Rights Act further provides:
>
> b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by section (a) of this section in its members have less opportunity than other members of electorate to participate in the political process and to elect representatives of their choice. . . .

42 U.S.C. § 1973.

The Voting Rights Act was intended to apply to vote dilution cases.[36] *United States v. Marengo County Board of Commissioners*, 731 F.2d 1546, 1556 (11th Cir. 1984).

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[36] The Act applies to any voting practice or procedure which results in discrimination on the basis of race, color or membership in a language minority group, 42 U.S.C. § 1973, amended by Pub.L., No. 97-205, § 3, 96 Stat. 131, 134 (1982) (codified at 42 U.S.C. § 1973 (West Supp.1983)). See also 128 *Cong.* Rec. S6500 (daily ed. June 9, 1982)(statement of Sen. Stevens, a co-sponsor of the Amendments).

The Senante Report on the 1982 amendment to the Voting Rights Act expressly states that the purpose of the amendment was to eliminate the requirement that plaintiff's prove a discriminatory intent. Instead, the amendment substituted a "results" test based upon a totality of circumstances analysis. S.Rep. No. 1982, 97th Cong., 2d Sess. 15 (1982).

The language of Section 2(b) supplemented by its legislative history provided the standard of proof for finding a Section 2 violation. The Senate Report delineates specific factors in determining whether the Section 2 violation has occurred.

The report lists the factors enunciated in *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973)(en banc), *aff'd on other grounds sub nom., East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976) (per curiam) which articulates the standard *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973) established:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise participate in the democratic process;

2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot voting provisions, or other voting practices or precedures that may enhance the opportunity for discrimination against the monority group;

4. if there is a candidate slating process, whether the members of the minority have been denied access to that process;

5. the extent to which the members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinders their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.[37]

The Senate Report makes clear that while factors it lists are often the most relevant considerations, they are not exclusive and thus not controlling. The factors are not "to be used as mechanical 'point counting' device[s]." S.Rep. at 29, U.S. Code Cong. & Adm.News 1982, p. 207. Moreover, a litigant need not prove all, or even a majority, of the factors to establish a Section 2 violation. *Id.* "The failure of plaintiff to establish any particular factor, is not

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[37] S.Rep. at 28-29, U.S. Code Cong. & Adm. News 1982, pp. 206, 207. The Report indicates two additional factors that in some cases have had probative values as part of plaintiffs' evidence to establish a violation:

> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;
>
> [and]
>
> whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or precedure is tenuous. *Id.*

The plaintiff's have not made responsiveness and issue for purposes of this litigation.

rebuttal evidence of non-dilution." *Id.* The relevant factors are only a guide to help the Court determine whether "based on the totality of circumstances . . . the voting strength of minority voters is ... 'minimized or cancelled out.' " *Id. See, United States v. Marengo County,* 731 F.2d 1546, 1567 (11th Cir. 1984); *Gingles v. Edmisten,* 590 F.Supp. 345, 355 (E.D.N.C. 1984)(discussion of polarized voting.)

A finding of a history of official discrimination permits the conclusion that this discrimination contributed to less frequent and less effective minority participation in the political process. *Rogers v. Lodge,* 458 U.S. 613, 102 S.Ct. 3272, 3279, 73 L.Ed.2d 1012(1982); *Jones v. City of Lubbock,* 727 F.2d 364, 383 (5th Cir. 1984); *McMillan v. Escambia County, Fla.* 748 F.2d 1037, 1043 (5th Cir. 1984); *United States v. Marengo County,* 731 F.2d at 1567 (11th Cir. 1984). The record in the case at bar clearly supports a finding of a history of official discrimination within the State of Louisiana and the City of Gretna.

Although no factor is indispensible, the legislative history of the amendment to Section 2 indicates that racially polarized voting will ordinarily be the keystone of a dilution case. *McMillan v. Escambia County, Fla.,* 748 F.2d at 1043 (5th Cir. 1984); *United States v. Marengo County Commission,* 731 F.2d at 1566.

Although racial polarization is defined as *beginning* where blacks and whites vote differently from each other in relation to the race of the candidates, it is "the demonstrable unwillingness of substantial numbers of the racial majority to vote for any minority race candidate or any candidate identified with minority race interests [that] is the linchpin of vote dilution by districting." *Gingles v. Edmisten,* 590 F.Supp. at 355.

Unless it can be shown that an election occurred in which a white candidate ran on issues strongly affecting the black community and with an open, positive and strong identification with the black community— which has not been shown in this matter—candidacies of black persons are the proper focus of inquiry concerning the extent to which elections are polarized.

Indeed every case reviewed by this Court utilized analysis of elections where blacks have run for office to determine whether racial polarization exists. See generally, *Major v. Treen*, 574 F.Supp. 325 (E.D.La. 1983); *Gingles v. Edmisten, supra; Jones v. Lubbock, supra; McMillan v. Escambia County Fla., supra;* and Johnson v. Halifax County, 594 F.Supp. 161 (E.D.N.C. 1984) noting:

> 8. Evidence of racially polarized voting is at the root of a racial vote dilution claim because it demonstrates that racial considerations predominate in elections and cause the defeat of minority candidates or candidates identified with minority interests. *Gingles* described the essence of a vote dilution claim as follows: "primarily because of the interaction of substantial and persistent racial polarization in voting patterns (racial bloc voting) with a challenged electoral mechanism, a radial minority with distinctive group interests that are capable of aid or amelioration by government is effectively denied the political power to further those interests that numbers alone would presumptively give it in a voting constituency not racialy polarized in its voting behavior."
>
> In other words, absent racial bloc voting an at-large system would not ensure the consistent defeat of minority candidates or candidates associated with minority interests.

Halifax County, 594 F.Supp. at 170 (footnote and citations omitted).

By and large the cases assume that racial polarization begins with mathematical correspondence between race of candidate and race of voters voting for that candidate. When evidence shows persistent patterns of racial bloc voting, courts have found racial polarization or polarized voting. *Major v. Treen,* 547 F.Supp. at 338; *Gingles v. Edmisten,* 590 F.Supp. at 367-372' *Johnson v. Halifax County,* 594 F.Supp. at 166; *McMillan v. Escambia County, Fla. supra.*

The Court concludes as a matter of law that neither Romain's nor Jones' candidacy were token. In demonstrating campaign expenditure, appeal to the white community, campaign strategy, public name recognition and exploring the effect income has on the votes of white persons, plaintiffs have provided the "common sense and intuitive assessment" noted by Judge Higginbotham to show that the black candidates did not run token races. *Jones v Lubbock,* 730 F.2d at 236 (special concurrence).

The "sliding minimum vote requirement" mandated in LSA-R.S. 18:511 and currently in effect in the City of Gretna is a form of majority vote requirement. The effect of this system is particularly egregious since a candidate receiving votes from more than 50% of all the voters may still lose the race. This kind of majority vote requirement tends to dilute the political strength of minority groups. *Jones v. City of Lubbock,* 727 F.2d at 383; *Rogers v. Lodge,* 102 S.Ct. at 3281. In addition to this majority vote requirement, the at-large system of election, with no district residency requirement, serves to effectively destroy the political voice of Gretnas's minority population. See *Rogers v. Lodge,* 102 S.Ct. at 3281; *Whitcomb v. Chavis,*

403 U.S. 124, 91 S.Ct. 1858, 1877, 29 L.Ed.2d 363. "Even under the best of circumstances, at-large districts tend to debase the value of a minority's political strength." *Jones*, 727 F.2d at 383. Gretna is the largest municipality within the State to maintain the at-large system. Despite a nearly 30 percent black population, no black person has ever been elected to office in the City of Gretna. This system, coupled with a majority vote requirement and no residency requirement serves to enhance the opportunity for discrimination against minorities in Gretna.

The City of Gretna has a long history of political control by one group—the "Miller-White" Ticket—which engages in an informal process of slating which discriminates against black persons. In jurisdictions where there is an influential official or unofficial slating organizaion and to receive its endorsement may be of paramount importance. In *White v. Regester,* for example, the Supreme Court found it significant that only two blacks had never been endorsed by the Dallas County Committee for Responsible Government, "a white dominated organization that is in effective control of Democratic Party candidate slating in Dallas County." *Marengo* at 1569.

While the Miller-White fraction is unconnected to any official national party, it is in effective control of candidate slating in Gretna. The Miller-White faction is admittedly unofficial, but the *Marengo* court clearly regards that distinction as irrelevant. No blacks have ever been endorsed by the Miller-White group. One black person testified that he had been excluded openly on the basis of his race.

Blacks in Gretna suffer greater socio-economic deficiencies in comparison with whites of discrimination in public and private facilities, education and employment and effects the ability and opportunity of blacks to

participate effectively within the electoral acheme. *McMillan v. Escambia County, Fla.* 748 F.2d at 1044; *Jones v. City of Lubbock,* 727 F.2d at 383; *Gingles v. Edmisten,* 390 F.Supp. at 361; *Zimmer v. McKeithen,* 485 F.2d at 1306. Congress indicated that plaintiffs are not required to show a casual connection between depressed socio-economic status and decreased opportunity to effectively participate in the political process. *Major v. Treen,* 374 F.Supp. at 341; *Gingles* at 363, f.n. 23; *United States v. Marengo,* 731 F.2d at 1567. The burden is upon defendants to show that this casual nexus does not exist, and that reduced participation is attributable to some other factor. *McMillan,* 748 F.2d at 1044; *Marengo* at 1568, 1569; *Cross v. Baxter,* 604 F.2d 875, 881-882 (5th Cir. 1979). Defendants have made no such showing.

Since its incorporation in 1913, Gretna has never had a black elected official. In *McMillan v. Escambia County, supra,* the Fifth Circuit on remand from the Supreme Court affirmed the finding of the trial court that the at-large system by which the county elected its commissioners effectively diluted minority voting strength, in violation of Section 2 of the Voting Rights Act. The absence of any black elected officials in an at-large scheme "is, of course, evidence of vote dilution." *Marengo,* 731 F.2d at 1571. *See White v. Register, supra; Zimmer v. McKeithen, supra.*

The record shows that only three times in Gretna's history have blacks run for office, and two of those attempts were made by the same individual. "[T]he lack of black candidates is a likely result of a racially descriminatory system." *McMillan,* 748 F.2d at 1045.

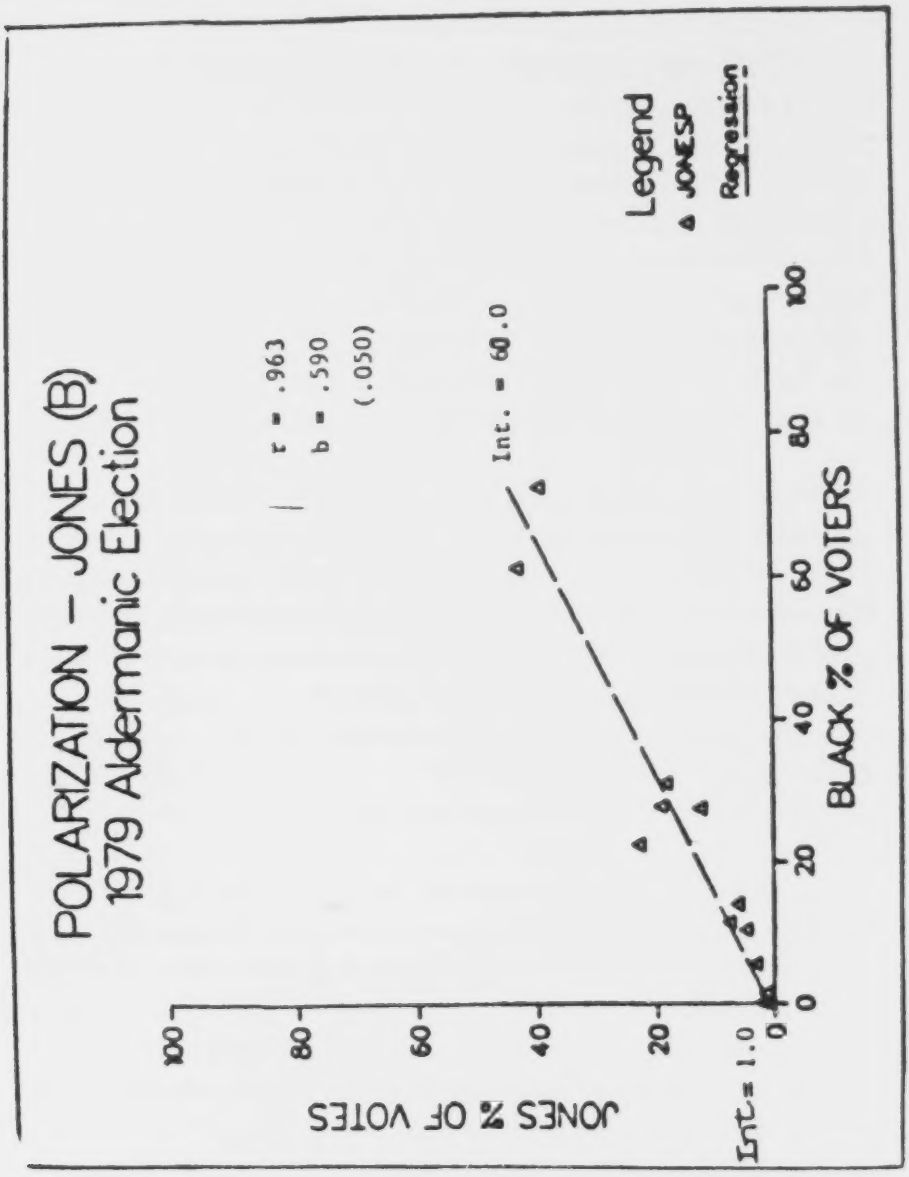
A consistently high degree of electoral polarization in gretna was proved through statistical and anecdotal evidence. Particularly as enhanced by Gretna's majority

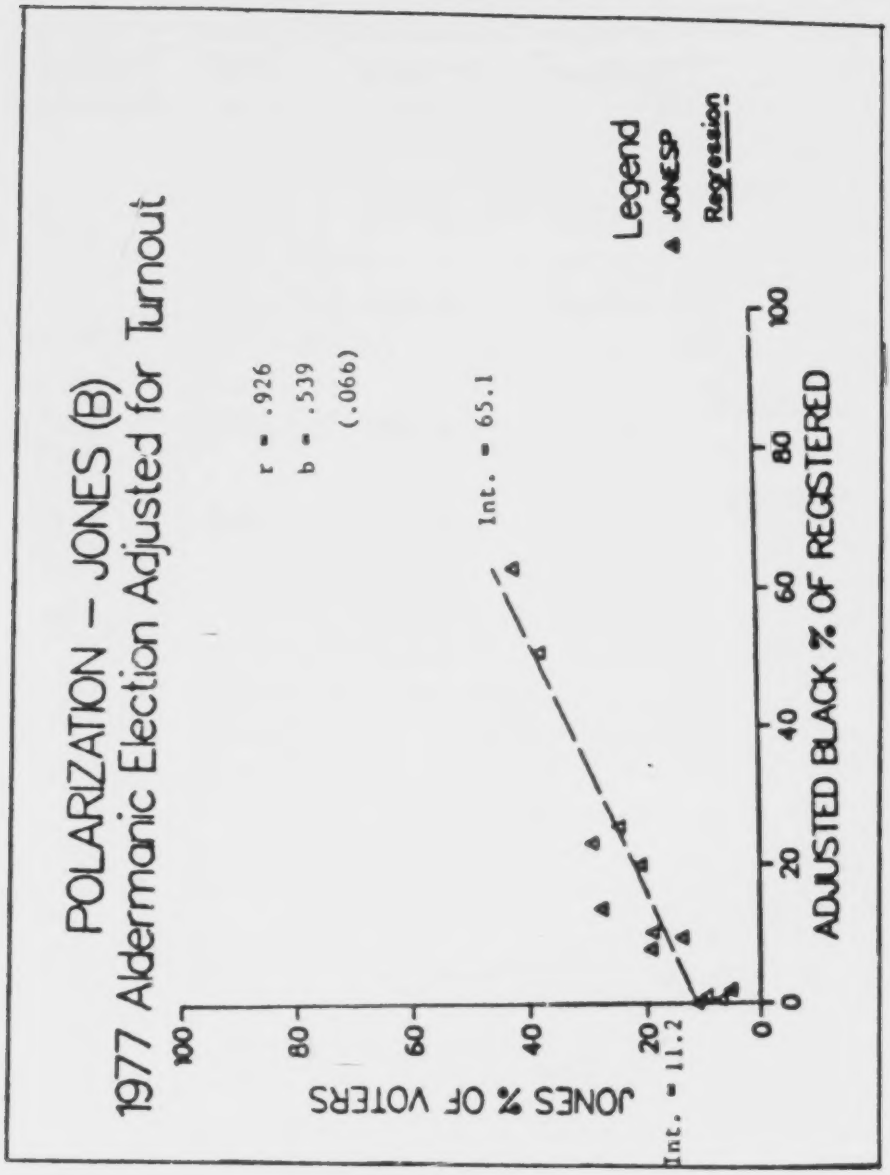
vote requirement, *see Major v. Treen*, 574 F.Supp. 351, n. 32, racial bloc voting substantially impairs the ability of black voters in Gretna to become fully involved in the democratic process. *Id.*

State law no longer requires the maintenance of the at-large system. The policy underlying the preservation of this system in Gretna is not relevant in determining whether there exists a violation of Section 2. As cited recently by the Fifth Circuit: "Particularly in light of the diminished importance [the tenuousness of state policy] factor has under the results test, we doubt that the tenuousness factor has any probative value for evaluating the 'fairness' of the electoral system's impact." *Jones v. City of Lubbock*, 727 F.2d at 383 (citations ommitted).

In sum, application of amended Section 2's "results" test to the aggregate of the facts adduced at trial, including Gretna's history on the present ability of blacks in Gretna to join in the political process, the vestiges of discrimination which take the form of a marked disparity in the socio-economic conditions under which blacks and whites currently subsist, and the parish's racially polarized voting, as exacerbated by its majority vote requirement, preponderates in favor of the plaintiffs.

Accordingly, the further use of the at-large system for the election of the Board of Aldermen within the City of Gretna is hereby prohibited. Defendants shall, within 30 days, submit to the Court a proposed new plan for electing persons to the Board of Alderman and simultaneously servea copy of same upon plaintiff's council. Obviously, it would be in the best interests of all citizens if the parties can reach an agreement on one plan. If not, the Court will review the proposal and issue whatever further orders it deems necessary at that time.


POLARIZATION – JONES (B)
1979 Aldermanic Election
r = .963
b = .590
(.050)
Int. = 60.0
Legend
JONESP
Regression
JONES % OF VOTES
BLACK % OF VOTERS
Int = 1.0
0
20
40
60
80
100


POLARIZATION – JONES (B)
1977 Aldermanic Election Adjusted for Turnout
r = .926
b = .539
(.066)
Int. = 65.1
Int. = 11.2
Legend
▲ JONESP
Regression
JONES % OF VOTERS
ADJUSTED BLACK % OF REGISTERED
0
20
40
60
80
100

Results of negression analysis in the 1977 and 1979 aldermanic elections.

Year	Correlation Coefficient	Unstandardized Regression Coefficient	Standard Error of the b	*Intercepts Left (white) Right (black)
1979 Unweighted:	r=.963	b=.590	(.050)	1.0% 60.0%
Weighted:	r=.962	b=.648	(.002)	0.9% 65.7%
1977 Unweighted:	r=.926	b=.539	(.066)	11.2% 65.1%
Weighted:	r=.926	b=.553	(.003)	12.0% 67.2%